The Solicitors' Journal

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Current Topics.

The New Judges.

At long last the Lord Chancellor, having obtained the statutory authority to do so on Tuesday, has added to the numerical judicial strength of the King's Bench Division by the appointment of two new judges, this bringing the number in this Division to a point never hitherto reached, although still considerably below what the exigencies of business and its prompt despatch really demand. As is usual when appointments to the Bench are in contemplation there was on this occasion the usual speculation regarding those whom the Lord Chancellor would delight to honour, but there were many who proved to be good prophets in singling out Sir Walter Greaves-Lord and W. G. Malcolm Hilbery as those designated for promotion. There will be felt, we believe, general satisfaction in the profession as to the excellence of these appointments. Each of the new judges has had a wide experience of most classes of litigation, and each has had what may be called the benefit of a judicial apprenticeship, Sir Walter Greaves-Lord as Recorder of Manchester, and Mr. Hilbery as Recorder of Margate, while the latter, as most readers are aware, has for some weeks past been acting as Commissioner of Assize—a temporary post which not infrequently has been but the prelude to appointment to the Bench. Both the new judges are still young, as judges go, which is an additional qualification when the work to be got through is strenuous and exacting. There is certainly plenty of work waiting the attention of these new judges.

Call within the Bar.

The newly-appointed King's Counsel were all, as it were, formally endowed on Tuesday with all the attributes of their higher status by being called within the bar. Much of the ritual which in former days attended the transition from the junior to the senior bar has gone—attendance at church, the salary of £40, and a supply of stationery—but there remains the swearing in before the Lord Chancellor in the quaint form that has come down from earlier times, and the perambulation of the courts and the call in order of seniority within the bar by the presiding judge. Till that ceremony has been accomplished the new silk, as has been indicated, is scarcely regarded as having completed his initiation into his new professional status. Once only, so far as we can recall, did a newly-created silk venture to take his seat in the front row before he had been thus formally invited to take his place within the bar. This was in the case of Mr. (afterwards Lord Justice) Lush, the father of the late Mr. Justice Lush. For some unexplained reason it was not until some days after his appointment as a Q.C. that he appeared in the silk gown belonging to that rank. In this interval, and still in his stuff gown, and before he had been formally called within the bar, he came one morning into the Court of Common Pleas and took his seat in the front row. Mr. Justice Cresswell, addressing Mr. Montague Chambers, Q.C., the counsel on the other side, said: "I do not know, Mr. Chambers, whether I can recognise the countenance of the gentleman beside you" (Mr. Lush). Mr. Lush then rose and said: "I mentioned the difficulty, my lord, yesterday to the Chief Justice, and he said I might take my seat provisionally within the bar." On being further informed that the Chief Justice was sitting in court when he said this, Mr. Justice Cresswell said, "Under the circumstances I will follow the example of the Chief Justice." Mr. Justice Willes demurred, saying, "I have not yet had the opportunity of inspecting the learned gentleman's patent," but on being promised an inspection of this document, the matter ended, and Mr. Lush was permitted to continue the case from the inner row.

Shorthand Notes on Circuit.

At the opening of the Hertfordshire Assizes at Hertford on the 13th instant, the Lord Chief Justice dealt briefly with some criticism of the circuit system, and added: "If we decline to follow the hearse of the circuit system we may still rock the cradle of a really valuable change. There are more signs than one that the reforming zeal of a discerning Lord Chancellor is about to secure, by a modest adjustment, a long overdue saving of time and money." After referring to the indispensable work of the shorthand writers attached to the Court of Criminal Appeal and the Probate, Divorce and Admiralty Divisions, his lordship observed that those who, at *Nisi Prius*, spend their lives writing down to dictation the copious evidence of a cloud of witnesses were unable to understand why their time and their attention could not be saved by recourse to the same simple expedient. With regard to the argument that a transcript of shorthand notes would impose an excessive burden upon the Court of Appeal, Lord Hewart said that the Court of Appeal need not read beforehand a single word of the transcript and could securely rely upon learned counsel at the proper time to direct attention to the relevant passages. The statement is a well-timed reminder of the Lord Chancellor's declaration on 22nd January in the House of Lords that he was trying to bring about the reform of instituting an official shorthand writer in each court (see 78 Sol. J. 885; 79 Sol. J. 53). Such a reform will effect a considerable saving of public time, and probably, as the Lord Chief Justice remarked, when it comes about, the last will have been heard of the cry that His Majesty's Judges are not, in point of number, sufficient.

The Roads: Five-Year Plan

As a result of representations to the effect that the present system, whereby annual allocations from the Road Fund are announced after the highways authorities' budgets have been prepared, has been unsatisfactory and a source of uncertainty and delay, the Minister of Transport, in a recent circular letter, invites highway authorities to submit at once schemes with which they are prepared to proceed immediately, and also to submit further instalments of their proposals for the next five years. The authorities will then be informed, as soon as possible after receipt of the proposals, of the schemes in respect of which grants will be made. The five-year plan will be specially directed towards the elimination of road dangers and the reconstruction of weak bridges. A recent correspondent to *The Times* alludes to the inadequacy of many beautiful old bridges for modern road conditions, and suggests that they might be preserved for one-way traffic, a new bridge being constructed for vehicles going in the other direction. Reverting to Mr. HORE-BELISHA's plan, it is to be noted that instructions have already been issued to divisional road engineers that all approved schemes of reconstruction of weak or otherwise inadequate bridges, whether privately or publicly owned, on classified roads or on important unclassified roads, and approved schemes for the elimination of level crossings on such roads, will be accepted for grant at the appropriate rate if it can be shown that the schemes will be begun during the financial year 1935-6. It is intimated that the Minister will await some clearer indication than is at present available of the amount of work with which highway authorities are in a position to proceed at an early date or within the period before determining the financial limits of the five-year programme.

Goods Vehicles Drivers' Licences.

THE Heavy Goods Vehicles (Drivers' Licences) Regulations, 1935, come into force on the 16th instant. The regulations, which follow the draft form obtainable last December, requires an applicant (unless under the Road Traffic Act, 1934, he can claim a licence as of right) to show a knowledge of the Highway Code, (substantially) to declare in writing whether he is suffering from any disease or physical disability calculated to impair his driving efficiency or render him a source of danger to the public, and to submit to a practical test of his ability to drive the type of vehicle in question. Copies of the regulations are obtainable at the Stationery Office or through any bookseller, price 1d.

Imprisonment for Debt, etc.

AT a recent luncheon meeting of the Howard League for Penal Reform to hear Sir JOHN FISCHER WILLIAMS speak on "Imprisonment for Debt," Lord ARNOLD, who took the chair, referred in course of some preliminary remarks to the recently published report on the work of the Government Committee on the question, and said that in 1934 20,416 persons were imprisoned: 11,244 for non-payment of fines, 6,089 for wife maintenance and affiliation orders, and 3,083 for non-payment of rates. The report, Lord ARNOLD said, was "notable for its humanity" and must not be pigeon-holed. Sir JOHN FISCHER WILLIAMS intimated in regard to imprisonment for non-payment of fines that the fault lay, not with the magistrates, but with the system. In many cases the magistrates did not consider it likely that a fine would not be paid and did not therefore seriously take into consideration the alternative of imprisonment. In such cases the defendant did not come before the court again, but went automatically to prison. With regard to maintenance orders, Sir JOHN alluded to the fact that, it being left to the wife or mother to enforce the order, payments were often allowed to accumulate until they reached a fantastic amount. At present the court has no power to cancel a part, it can only wipe off the whole debt or allow it to stand. It was suggested that an officer of the court be made responsible for the receipt of such payments, and at the end of, say, a month, report the offender to the court if no payment were made. After some statements concerning non-payment of rates and a commendation of the Scottish system of compounding for rates, Sir JOHN concluded: "If we are to have a proper respect for personal liberty and dignity there should not be imprisonment except after deliberate consideration by authority into the circumstances of each case, and no one should be imprisoned unless it is considered that he has overstepped the line which distinguishes civil from criminal liability." We are indebted to *The Times* for the foregoing information.

Cottage Holdings.

THE erection of cottages with half an acre of land in sufficient numbers to meet the needs of the casual labourer and part-time worker in villages and country towns recently advocated, in view of the unemployment problem, by a recent correspondent to *The Times* is, as he points out, already provided for by existing legislation. Section 12 of the Agricultural Land (Utilization) Act, 1931, empowers a county council to provide a cottage holding for any one who, in the council's opinion, is a suitable person and who satisfies the council that (*a*) he will reside permanently in the dwelling-house comprised in the holding, and (*b*) has the intention, knowledge, and capital to cultivate satisfactorily the land forming part of the holding. A cottage holding is defined as "A holding comprising a dwelling-house, together with not less than forty perches and not more than one acre of agricultural land which can be cultivated by the occupier of the dwelling-house and his family." The letter states that little action, if any, has been taken by county councils to create these small holdings and that its object is to urge all responsible authorities, especially county, district and parish councils, to give these small holdings a trial. It is also indicated that in the districts in question, unemployment has gained so firm a hold that any suggestion put forward to overcome it should take account of the future as well as of the present.

Tithe Commission: Recent Evidence.

RECENT evidence before the Royal Commission on Tithe Rent-charge under the presidency of Sir JOHN FISCHER WILLIAMS includes that tendered by the Tithe League and by the Governors of Queen Anne's Bounty. Mr. M. C. MCCREAGH, Secretary of the Tithe League, said that the league was founded in 1930 and had 150 members. The witness referred to a Parliamentary Bill which they had prepared to the effect that tithe should in any event be restricted to a tenth of the annual value of the land to which it was apportioned, and that there should be no recovery of accumulated arrears of tithe which failed to issue out of the land after one year from the making of an order. Reference was also made to the following memorandum of the league: "If the legislature is not prepared in this way to protect tithe-payers from excessive tithe and recovery of accumulated arrears of tithe, we object to tithe in the form of a pecuniary claim, and contend that if it is considered that anyone has a good title to tithes he should collect a tenth of the titheable produce which, upon the most favourable view of his claim, is all that he could be entitled to." The witness expressed the opinion that it was not possible for the present rate of tithe—7s. 6d. an acre—to be economically paid purely from agriculture and mentioned what he described as "hobby agriculturists" who owned and cultivated land but had other businesses, so that whether agriculture was profitable or unprofitable it did not matter to them. It is difficult to see the relevance of the latter point.

The Governors of Queen Anne's Bounty.

THE evidence tendered by the Governors of Queen Anne's Bounty was contained in a lengthy memorandum which Mr. GEORGE MIDDLETON, Chairman of the Tithe Committee

of the Governors, and Mr. W. G. HANNAH, Assistant Secretary, attended to submit, support and supplement. Reference was made in the memorandum to the provision in the Act of 1925—by which Queen Anne's Bounty became responsible for the collection, etc., of ecclesiastical tithe rent-charge—to the effect that the Bounty are not bound to take any legal proceedings for the recovery of payments they had not received if in their discretion they consider it desirable not to do so. Mr. MIDDLETON stated that in not a single case had they proceeded to execution where it would have involved real hardship and that they always consulted the incumbent before proceeding to act on their own responsibility. The witness denied that it was a hardship for the tithe-payer in cases of difficulty to be dealt with by a centralised body in London rather than by the incumbent. The latter, it was intimated, might for personal reasons be induced to accept a settlement which the Bounty might consider not quite fair, and when a tithe-payer indicated that he was bearing a loss out of capital the Bounty, the witness thought, had a right to inquire into the origin of the capital, whether it was profits earned in previous years from farming and put aside then. In this connection the analogy between tithes and mortgage interest was stressed. According to the memorandum the tithe trouble is regarded by the Governors as largely of an opportunist character and "many of those who have fostered the tithe movement have seized on the opportunity created by the heavy fall in agricultural prices. Events have proved that as prices improve the tithe trouble is subsiding."

Recent Decisions.

AMONG recent decisions should be mentioned that of EVE, J., in *Elderton* v. *United Kingdom Totalisator Co., Ltd.*, (p. 126 of this issue), where it was held that football pools relating to the forecasts of football match results, and also to the number of goals which would be scored by both sides in each of five selected matches, were not illegal under s. 26 of the Betting and Lotteries Act, 1934.

In *Attorney-General* v. *Valle-Jones* (p. 126 of this issue), MACKINNON, J., gave judgment for the Crown in a claim by the Attorney-General by Latin information to recover a sum of money in respect of loss of services and expenses incurred by the Crown owing to injuries sustained by two aircraftsmen in the Royal Air Force as a result of the negligent driving of the defendant's motor lorry by one of his servants.

In *Leng* v. *Dodgshon* (p. 127 of this issue), £430 damages were awarded in respect of injuries received as the result of a dog bite. The case turned upon the familiar point, GODDARD, J., intimating that he was perfectly certain that the dog was in the habit of rushing up to people and nipping and biting their ankles if he could. The learned judge expressed himself as also perfectly satisfied that the defendant had had that fact brought to her knowledge, although she had doubtless refused to believe it.

In *British Celanese Ltd.* v. *Courtaulds Ltd.* (p. 126 of this issue), the House of Lords dismissed the plaintiffs' appeal from a judgment of the Court of Appeal, dated 26th June, 1933, the latter court having dismissed a similar appeal from a decision of CLAUSON, J., dated 13th February, 1933. The plaintiffs claimed an injunction, damages and other relief in respect of alleged infringement of certain of their patents relating to the manufacture of artificial silk. Lord TOMLIN'S judgment is fully reported in *The Times*, and the case will doubtless be reported elsewhere in due course.

In *Dawson* v. *Spaul* (*The Times*, 12th February) a question was raised relating to s. 1, sub-s. (1) of the Law Reform (Miscellaneous Provisions) Act, 1934, which provides for the survival for or against a dead person of all causes of action. No order was, however, made under the present summons regarding a sum of money in court, except that the money should remain in court pending the trial of the action.

Magistrate's Practice.

A METROPOLITAN magistrate recently announced that he proposed to adopt a new procedure for the taking of depositions in cases which were to be committed for trial. This practice, as adopted on 24th January, was as follows: The solicitor for the prosecution handed to the magistrate statements of witnesses. As each witness gave his evidence, the magistrate's clerk checked a copy of the statement, making any necessary alterations, and after the witness had been cross-examined and all necessary alterations and additions made, the statement so corrected was read over to him, signed and sent forward as his deposition.

On 30th January, the Chief Metropolitan Magistrate expressed the opinion that this practice was irregular, and contrary to the law, and emphasised the importance of seeing that depositions were "carefully, impartially, and formally taken." On 5th February, the magistrate who had adopted the new practice made a further statement, explaining exactly what had been done. He went on to examine s. 17 of the Indictable Offences Act, 1848, and to point out that in fact the requirements of that section were never fully observed in practice; depositions were never taken down in writing by the justice himself, nor were they signed by the justice in the presence of the accused before committing for trial. He further observed that where, after there had been several hearings and after some of the depositions had been taken, additional defendants were brought into the case, all the witnesses were recalled, and their evidence was read over to them in the presence of the defendants. He said that the new procedure would save nearly three hours in every four, and would save expense to the accused, and to the public funds, and added that he would welcome a ruling on the point by a higher authority.

This matter has been the subject of comment in these pages (79 SOL. J. 54, 75 and 95), but as it is a matter of some importance it is worth while to look in detail at an authority, which seems to cover the point exactly, but is unfortunately not officially reported, and therefore not generally known. This is the case of *Rex* v. *Slinger*, heard at Leeds Assizes on 4th April, 1930. By the courtesy of a correspondent, we have been furnished with a full newspaper report of the case. Counsel for the defence called attention to what he submitted was a "gross irregularity" in the taking of the depositions. Charles, J., summoned before him the Clerk to the Justices, who described the course which had been followed. A clerk had prepared the depositions from police reports, and when the witnesses gave their evidence the magistrate's clerk followed the depositions already written out, making the necessary additions and alterations. Charles, J., said: "It is a hopelessly improper manner of proceeding. There were two justices who required that the depositions were taken and sworn before them, but they were not. The depositions were prepared quite wrongly and irregularly and without any sort of sanction in law and contrary to the statute. They were prepared from a document which the police had provided. It is difficult to describe the trouble that might arise from a practice of this sort, and it must never occur again. The depositions must be taken in court in accordance with the statutory rule, and written down there and then. I can conceive a case of the utmost importance when the principal witness is ill and application is made that the deposition should be read. If an objection were taken that, in fact, the deposition was written out before the court sat, no judge would allow it to be read, and justice would not be done."

After saying that he imputed no "sinister idea" to the clerk to the justices in that case, the learned judge said that this practice let in a source of real and definite danger, and that reports taken by the police in the absence of the prisoner could not be said to be accurately or properly to indicate what really

happened. "In cases of this sort" (i.e., an offence against a girl) "it is especially necessary, because as we all know the very slightest hint to a little girl will be accepted—accepted sometimes, in my experience, only too readily—and that passes into what becomes a document of deposition." Charles, J., suggested to counsel for the prosecution, that in view of the irregularity of the proceedings, especially in a case of that sort, it would not be improper to offer no evidence, but the case proceeded. At the close of the case for the prosecution the learned judge said that it would not be safe for the jury to convict, and directed them to find the prisoner "Not Guilty."

While, of course, it does not follow that the prisoner must in every case be acquitted where depositions have been irregularly taken, the view expressed by Charles, J., as to depositions rests upon long-standing authority. In a case at Winchester Assizes in April, 1885, Hawkins, J., refused to receive as evidence a deposition taken in the absence of the prisoner, and, after discharging the prisoner and severely censuring the magistrate and his clerk, disallowed the costs of the prosecution. Older authorities to the same effect are *R.* v. *Christopher*, 14 J.P. 83, and *R.* v. *Watts*, 27 J.P. 821. In the former case, Wilde, C.J., said: "The authority of a deposition is derived from the fact that the law has charged the magistrate with the duty of recording what the witness has said. The law presumes that he will do his duty, and therefore that which he so does becomes the best evidence."

The governing statute is s. 17 of the Indictable Offences Act, 1848, which directs that the justices "in the presence of such accused person, who shall be at liberty to put questions to any witness who shall be produced against him," shall "take the statement on oath or affirmation of those who shall know the facts and circumstances of the case, and shall put the same into writing, and such deposition shall be read over and signed respectively by the witness" and by "the justice or justices taking the same." Under s. 12 of the Criminal Justice Act, 1925, the deposition must be read over to the witness in the presence and hearing of the accused. These provisions clearly lay down a system whereby depositions shall be actually taken in open court. The question gains in importance through the provisions of s. 13 of the Criminal Justice Act, 1925, under which depositions may in certain cases—as where the witness is dead, insane or ill—be read at the trial. It must be prov that the deposition was taken in the presence of th accused; otherwise it is clear that it will be inadmissible, and for want of it a well-founded charge may fall to the ground.

It seems clear, therefore, that the suggested new practice is irregular, but many will sympathise with the difficulties with which it was intended to deal. In a more leisured age, evidence could only be recorded, however slowly and laboriously, by a clerk with a quill pen, but in these days, when the record could be made more rapidly, accurately and legibly by shorthand and typewriter, it seems an amazing anomaly that the time of the court should be wasted while a long-hand record is made. In long cases, where the bulk of the evidence is undisputed, the result may be, as pointed out by the metropolitan magistrate, more than to double the length of the hearing. After some doubts had been expressed upon the matter, it was stated in a note to a Home Office circular, dated 12th May, 1891, that the judges had "expressed the opinion that depositions may be lawfully taken in type-writing, provided they are read and signed by the witness immediately after the evidence has been given," but they were of opinion that the use of shorthand in the taking of depositions was not permissible. Lord Reading, while Lord Chief Justice, said in reply to a deputation from the Justices' Clerks' Society that, subject to certain safeguards, he saw no objection to the taking of depositions in shorthand, but he brought the matter before the judges, who expressed the opinion that "it was undesirable to recommend any change." It is said that in many courts the evidence is taken in shorthand and transcribed, the depositions being read over in the presence of the justice, witnesses and prisoner. While this is obviously a convenient practice, it is difficult to see how it can comply exactly with the provisions of the statutes, and in view of the opinions expressed by the judges, its regularity seems doubtful. On the other hand, there is authority for some latitude of practice in *Reg.* v. *Bates*, 2 F. & F. 317, where it was held a proper practice to have abbreviated notes, taken during the examination of a witness by the magistrate's clerk, fair copied in full in an adjoining room, and afterwards read over in the presence of the prisoner and signed by the witness. The conclusion of the whole matter seems to be that the present rules are anomalous and full of doubt, and that the time is ripe for the introduction of a uniform system which would speed up the business of the police courts without sacrificing any real safeguard for the interests of justice.

The Order for Production of Ship's Papers.

It is hoped that when one of the many commissions and committees now appointed to consider methods of speeding up litigation is at a loss for ideas, it will consider advising the destruction of that noxious prehistoric monster, the practice of ordering production of ship's papers. The order, whose language is nearly as archaic as itself, is set out in Form 19 (H.17) of App. K of the Rules of the Supreme Court, its present shape having been settled by a committee presided over by the late Lord Justice Scrutton as a result of the criticisms passed on the previous form by Atkin, L.J., in the case of *Teneria Moderna Franco Espanola* v. *New Zealand Insurance Co.* [1924] 1 K.B. 79.

Briefly, the effect of the order, which as set out in App. K contains some 720 words, is to compel the plaintiff to produce all documents in existence relating to the policy sued on, the goods included in such policy and the voyage to which such policy relates, including "all correspondence between the captain or agent of the vessel and any other person with the owner or any other person or persons previous to the commencement of or during the voyage upon which the alleged loss happened." Until the plaintiff has produced such documents upon oath, or has accounted for them upon oath, showing the reasons for his failure to obtain any such documents not disclosed and his efforts to obtain them (*Teneria Moderna Franco Espanola* v. *New Zealand Co.*, *supra*), all proceedings in the action are stayed.

This order differs from the usual order for discovery in several important respects. In the first place it is confined to actions brought against insurers upon policies of marine insurance. Attempts to widen its scope to include other forms of insurance have failed. For example, in *Schloss* v. *Stevens* [1905] 10 Com. Cas. 184, the court declined to make an order where the transit covered by the insurance was entirely inland, and in *Tannenbaum* v. *Heath* [1908] 1 K.B. 1032, the court refused to extend the practice to actions brought under a policy of fire insurance. It applies, however, to all cases of marine insurance and to all plaintiffs, from owners of lost ships to owners of the smallest quantity of cargo damaged in transit. Thus, a plaintiff whose goods were burned in a lorry near Cairo and who was suing underwriters on a marine policy containing a "warehouse to warehouse clause," was ordered by the Court of Appeal to produce all the ship's papers in respect of the sea voyage on which the goods were never carried, but on which they would have been carried had they not been previously destroyed on land: *Leon* v. *Casey* [1932] 2 K.B. 577.

In the next place, the order is addressed not only to the plaintiff but to "all persons interested in the proceedings and

in the insurance." For example, where the plaintiff was the mortgagee of a ship which was lost, the underwriter was held to be entitled to an affidavit from the shipowner mortgagor as to the papers in his possession as well as from the plaintiff: *Graham Joint Stock Shipping Co.* v. *Motor Union Insurance Co.* [1921] 1 K.B. 563.

In the third place, it includes not only such documents as are or have been in the possession or power of the plaintiff or his agent, but all documents of the nature specified in the order, wherever or in whosesoever possession they may be: *Teneria Moderna Franco Espanola* v. *New Zealand Insurance Co. Ltd.* (*ubi supra*).

In the fourth place, once the order has been made it has the effect of staying the action until it has been complied with, and for that reason it is commonly applied for after delivery of the statement of claim, but before delivery by the underwriters of their defence. Finally, it is a unilateral order, and one to which underwriters are entitled as of right whenever they are being sued upon a policy of marine insurance, and nothing short of an Act of Parliament is capable of taking this right away from them. Although there is no form of order in the County Court Rules corresponding to Form 19, App. K, of the Rules of the Supreme Court, County Courts can and not infrequently do make such orders by virtue of s. 164 of the County Courts Act, 1888, and on the coming into force of the County Courts Act, 1934, will do so under s. 100 of that Act.

In order to appreciate the reason for the peculiarities of this order it is necessary to consider its history which incidentally, in view of the number of cases in which the plaintiff has appealed as far as the Court of Appeal rather than give the affidavit asked for, throws a light on the unpopularity of the practice. There can be few interlocutory orders against which appeal has so frequently been made.

Formerly there was no procedure for discovery in Common Law courts. If a party wanted to see his opponent's documents, he had to file a bill in equity and take proceedings in equity for this purpose, the Common Law proceedings being held up meanwhile. By the beginning of the nineteenth century, however, the practice had grown up of granting to underwriters sued upon a policy of marine insurance (at that time practically the only form of insurance) an order for the production of ship's papers, such order being made immediately after the issue of the writ. The reason for this practice was partly to avoid the inconvenience of compelling the defendant underwriter to commence proceedings in equity, an inconvenience which he shared, however, with all other Common Law litigants, and partly because of the doctrine that a contract of insurance is one of the uttermost faith, a doctrine which ceased to have any significance on the courts refusing to extend the practice to forms of insurance other than marine but involving equal good faith. It was considered that the underwriter in London was not in the same position as the assured to ascertain the various material facts in connection with the policy the subject matter of the insurance and that consequently it was the duty of the assured to put the insurer in possession of such facts. This reason again seems rather unconvincing to-day, when Lloyds underwriters have far greater facilities for obtaining information as to the movements of ships than the average cargo owner. This practice received the official sanction of Mansfield, C.J., in *Goldschmidt* v. *Marryat* (1809), 1 Camp. 559, and thereafter has been regarded in marine insurance circles with almost religious veneration.

With the passing of the Judicature Act, 1873, the practice of discovery became universal, and it might well have been supposed that the ordinary affidavit of documents would have rendered obsolete the affidavit of ship's papers, which had clearly outlived its necessity. Indeed, in the case of *Fraser* v. *Burrows* (1877), 2 Q.B.D. 624, the court (Kelly, C.B. and Field, J.) reversing an order of Cleasby, B., held that the defendant underwriter was not entitled to an order staying proceedings until discovery by the plaintiffs of ship's papers in the possession of a person out of the jurisdiction who was not interested in the insurance and over whom the plaintiff had no power. This setback, however, was only shortlived, for three months later Cleasby, B., who "was beyond all others conversant with this branch of the law," apparently won over the learned Chief Baron, and in *West of England and S. Wales District Bank* v. *Canton Insurance Co.* (1877), 2 Ex. D. 472, the court made the same order as that which they had refused the defendant in *Fraser* v. *Burrows*. The reasons given for this decision are most unsatisfactory, Kelly, C.B., regretting the terms of the order, nevertheless came to the conclusion that the court would "be doing no injustice by making the order absolute" as orders in the form asked for "have been made at Chambers for a very long time." Cleasby, B., baldly stated: "I am certainly not prepared to say that the old practice, which is confined to actions on marine policies, is superseded by the Judicature Act. I am quite sure I have made this order at Chambers myself more than once since the passing of the Judicature Act." This decision was approved four years later by the Court of Appeal in *China Transpacific Steamship Co.* v. *Commercial Union Assurance Co.* (1881), 8 Q.B.D. 141, and in many later decisions, particularly in *Graham Joint Stock Shipping Co.* v. *Motor Union Insurance Co.* [1922] 1 K.B. 563, which case expressly over-ruled *Fraser* v. *Burrows*, *supra*.

The extension of the practice to cases in which goods have been carried partly on land and partly by sea was refused in the cases of *Henderson* v. *Underwriting & Agency Association* [1891] 1 Q.B. 557, and *Village Main Reef Gold Mining Co.* v. *Stearns* (1900), 5 Com. Cases 246, but these decisions were questioned and not followed by the Court of Appeal in *Harding* v. *Bussell* [1905] 2 K.B. 83 and *Leon* v. *Casey* [1932] 2 K.B. 576.

This last case is remarkable for a review of the history of the practice by Scrutton, L.J., and for a vigorous attack by Greer, L.J., on its habitual abuse by underwriters. After stating that "those members of the profession who . . . have been largely engaged on matters of marine insurance have come to believe that the rules which have hitherto been applied in marine insurance are those which ought to be applied, and that the law as it stands is incapable of improvement" (an observation particularly applicable to the judgments in *West of England, etc. Bank* v. *Canton Insurance Co., supra*), the learned Lord Justice goes on to say that: "In my opinion the order for ship's papers was invented at a time when it was necessary in order to do justice to the case of the insurers, it has now become an unfair and unjust weapon in the hands of the insurer. I have known case after case in the Commercial List where defendants who had no real defence have been enabled by means of this instrument of oppression to keep plaintiffs out of their insurance money for long periods at a time . . . It has ultimately been decided that if in a case of marine insurance there is a single document which has not been accounted for by the plaintiff, the defendant can hold up the case until the plaintiff searches the world over for that document, which is often just as obtainable by the insurers as by the assured."

He then recommends that some power of discretion be given to judges enabling them to refuse to make orders for ship's papers in cases where the practice "is being abused as a means of oppression in the hands of the insurance company or Lloyds underwriter."

These words sum up so admirably the objections to a practice repugnant alike to the spirit of Magna Carta and to the modern desire of the business community to do away with all obstacles to cheap and speedy justice, that it only remains to add that if ever there were a propitious moment for extirpating this obstinate survival it is the present.

Agreements for Tax-free Payments.

[Contributed.]

One of the better-known peculiarities of our law is expressed in the proposition that a gift by will of an annuity of £*x*, free of tax, is valid, and an agreement to pay an annuity of such an amount as, after deduction of income tax thereon at the standard rate, will leave £*x*, is valid, but an agreement to pay an annuity of £*x*, free of tax, is effectual only to create an annuity of £*x*, subject to tax. This is the result of the enactment—which originated, we believe, as s. 115 of the Income Tax Act, 1806, and now appears as r. 23 (2) of the All-Schedules Rules in the Income Tax Act, 1918—that every agreement for payment of interest, rent or other annual payment in full, without allowing the deduction of tax at the source which the Act provides for, is void.

The general scheme of the Income Tax Acts, it need hardly be said, is that the gross amount of any annual or quasi-annual sum which A is legally bound to pay B is deducted from the taxable income of A and included in that of B: the payment is made less tax, and A and B are respectively debited and credited with the amount of the tax. Thus, if A has to pay B £100 a year, and income tax is 4s. 6d. in the pound, he pays £77 10s.; £100 is excluded from his taxable income and included in B's; and the income tax on their respective incomes so ascertained is increased by £22 10s. in the case of A, and diminished by £22 10s. in the case of B.

In this scheme an agreement that a particular liability shall be discharged without deduction of tax is out of place. The payment contemplated is the tax on the sum named, in addition to the sum named, less tax, which would have been payable if the agreement had not been made: and if such an agreement were valid, a difficulty would arise in regard to the tax on the amount, equal to the tax so agreed to be paid. Thus, if, in the case just put, A agreed with B that his £100 should be paid without deduction of tax, and the agreement were valid, a question would at once arise as to whether the £22 10s. (representing tax), so agreed to be paid, formed part of the taxable income of A, or of B; and either result would be in conflict with the scheme of the Acts. If it formed part of the taxable income of B, the payee, the tax on it would have to be collected from B, which would be inconsistent with the scheme of deduction of tax at the source. To include it, on the other hand, in the taxable income of A, would be inconsistent with the system whereby a sum which a man is legally bound to pay is excluded from his taxable income. But if the sum were treated as a voluntary payment, naturally it would be impossible to exclude it from A's taxable income or include it in B's: and it may be that the provision avoiding agreements to pay without deduction of tax was made with the object of attaining uniformity and certainty as to the incidence of the tax on the tax without causing injustice or dislocating the scheme of the Acts. In other words, the Legislature may be taken to have said: "If A, being bound to pay B £100 a year, agrees to pay it without deduction of tax, the difference between £100 and £100 less tax shall be included in A's taxable income, whether A pays it or not; but as a corollary to that we will say that the agreement to pay it shall not be enforceable against him." Whether this was the reason or not, the provision, considered in reference to agreements for full discharge of existing liabilities, is reasonable and intelligible.

An agreement to pay, free of tax, a sum not existing before is not an agreement of the kind just mentioned. There is no agreement to discharge without deduction an antecedent liability; on the contrary, the liability is itself created by the agreement, and is in effect defined by reference to the balance remaining after deduction of income tax as prescribed by the Act. And in this case the liability is different in amount; the intention being that the payee shall be relieved of all tax, and that the payer shall therefore pay not only the tax on the sum named, but the tax on that tax, and so on *ad infinitum*: in other words, shall pay such a sum as after deduction of income tax thereon will leave the sum mentioned.

The courts, as is well known, have never made, nor, apparently, have they considered, any such distinction as is here suggested, but they have applied the provision to all agreements, of whatever nature and however worded, for provision of a sum "free of tax," or "without deduction of tax." Indeed, in the case of a sum "free of tax," not existing before, the question appears originally to have been, not whether the provision applied, but whether it did not avoid the agreement *in toto*, so as to relieve from all liability to pay anything whatever: see *Readshaw* v. *Balders* (1811), 4 Taunt. 57.

This leads to the absurd situation mentioned at the beginning of the article. The present writer suggests that the provision was intended to apply solely to agreements not to deduct tax in fulfilling an obligation to make a payment from which tax is deductible under the Act; and was not directed to agreements creating obligations for the first time and measuring them, in effect, by reference to the net amount remaining after income tax had been deducted. The present provision (r. 23 (2)) reads thus: "Every agreement for payment of interest, rent or other annual payment in full without allowing any such deduction shall be void." If for "payment of" had been substituted "discharge of a liability for," the present situation might not have arisen, and it could never become necessary for a man who inadvertently agreed to pay "£*x* free of tax" instead of "such a sum as after deduction of income tax thereon at the standard rate will leave £*x*," to explain to the court, in an action for rectification, that in agreeing to pay £*x* free of tax he intended to become liable, in effect, to provide £*x* free of tax. Mistakes in drafting occur on occasion, and perhaps it is not too much to hope that by some suitable amendment the provision may be placed on what is here suggested to be its proper footing.

Company Law and Practice.

Dissolution under Section 295.

My readers will remember that s. 295 deals with the power of the Registrar to strike a defunct company off the register, and I would like to indicate some of the practical problems that may arise from it. The section is a long one and a paraphrase of it must, I fear, suffice.

The preliminary steps which the Registrar takes, if he has reasonable cause to believe that a company is not carrying on business or in operation, before the actual dissolution of the company occurs, are as follows: (1) To enquire by letter whether it is carrying on business or in operation; (2) on receiving no answer to this letter within one month from sending it, to send, within fourteen days of the expiry of that month, a registered letter referring to the first and stating that no answer has been received and that if an answer to this second and registered letter is not received within one month from its date, a notice will be inserted in the *Gazette*, with a view to striking the company's name off the register; (3) a month later, to publish in the *Gazette* and send to the company by post a notice that, at the expiration of three months from the date thereof, the name of the company will be struck off the register and the company dissolved, unless cause to the contrary be shown. The company is dissolved upon the publication in the *Gazette* of a notice to the effect that the name has been struck off. A letter or notice to be sent to the company under this section may be addressed to the company at its registered office; and if no office has been registered to certain other persons (sub-s. (7)).

A careful perusal of s. 295 will bring to light (besides certain other details which space compels me to omit) several curious points in its draftsmanship. Sub-section (5) provides that the company is to be dissolved after the happening of certain events, the most important being those I have outlined above: but by para. (*a*) of sub-s. (5) "the liability, if any, of every director, managing officer, and member of the company shall continue and may be enforced as if the company had not been dissolved," and by para. (*b*) nothing in sub-s. (5) is to affect the power of the court to wind up a company whose name has been struck off the register. As if this were not sufficient evidence of its ghostly existence, further proof is contained in sub-s. (6) whereby the company, if aggrieved at being thus struck off the register, may apply within twenty years from the date of its dissolution, to have its name restored thereon.

The first question that one asks oneself is what happens to the property of the company, and the answer is contained in s. 296. Where a company is dissolved, all property and rights whatever vested in or held on trust for the company immediately before its dissolution (including leasehold property but not including property held by the company on trust for any other person) shall, subject and without prejudice to any order which may at any time be made by the court either under s. 294 declaring the dissolution void or under s. 295 restoring the name to the register, be deemed to be *bona vacantia*, and shall accordingly belong to the Crown or to the Duchy of Lancaster or the Duke of Cornwall for the time being, as the case may be, and shall vest and may be dealt with in the same manner as other *bona vacantia* accruing to the Crown or the Duchy of Lancaster or the Duke of Cornwall.

The position of a dissolved corporation has attracted the attention of the courts on many occasions, while the subject of *bona vacantia* enjoys considerable antiquity. I would refer my readers to the case of *In re Higginson & Dean: ex parte The Attorney-General* [1899] 1 Q.B. 325, in which the facts offer an apt illustration of both these matters. The *obiter dictum* of Wright, J., in this case (at p. 332) was dissented from by the Court of Appeal in *In re Sir Thomas Spencer Wells: Swinburne-Hanham* v. *Howard* [1933] Ch. 29, reversing the decision of Farwell, J., in [1932] 1 Ch. 380. An observation of Lawrence, L.J., at p. 50, is useful to us: "The right of the Crown to succeed to the personal estate vested in a company at the time of its dissolution does not, in my opinion, differ in substance from the right of the Crown to succeed to the personal estate of a person dying intestate without next of kin. In both cases the title of the Crown arises because the property has no other owner: such property must not, of course, be confused with property the owner of which is unknown."

Now it often happens that the directors of a limited company authorise a solicitor to sue an individual for (*inter alia*) damages, liquidated or unliquidated, the company to be made plaintiff. In due course judgment is pronounced and entered in favour of the plaintiff company, and it is not unknown for the solicitor to discover that the company has, in the meantime, been dissolved under s. 295. Some extremely difficult questions may then arise for consideration. Bearing in mind the provisions of s. 296, let us see if we can anticipate those difficulties. Assume that when the directors instructed the solicitors the three months' notice had been sent to the registered office (say) four months earlier, and none of the officers of the company nor the solicitors knew of the notice, nor had seen any publication in the *Gazette*. This is not so extraordinary a thing to happen as at first sight it appears to be. Since the company may have been unable to pay the rent of its registered office and therefore left, and the directors may have left no orders as to the re-directing of letters, nor notice of change to the Registrar as s. 92 (2) requires. At the time, then, of issuing the writ the solicitors would be acting for a client (the company) who was not in existence.

On this point of a non-existent client there is considerable authority. The underlying principle appears to be that an agent warrants the existence and capacity of his principal: *Collen* v. *Wright*, 8 E. & B. 647; and though a solicitor quite innocently is ignorant that his principal and client is non-existent or incapable, yet, in relation to persons who incur costs and expenses on the faith of his representations, the solicitor is liable in damages. An instance of this principle in application is the case of *Simmons* v. *Liberal Opinion, Ltd.; In re Dunn* [1911] 1 K.B. 996; that is authority for the proposition that a solicitor assuming to act for one of the parties to an action warrants his authority, and is personally liable to the opposing party for costs, if it turns out that the client for whom he assumed to act is non-existing or has revoked his authority. See also *Tetlow* v. *Orela, Ltd.* [1920] 2 Ch. 24, where the supposed client was dead when the action was commenced. The revocation of an authority, originally good, without the solicitor's knowledge is no excuse: *Yonge* v. *Toynbee* [1910] 1 K.B. 215: this might have occurred with our company if the three months had expired after the issue of the writ, when the duty of the court becoming aware in the course of an action that the plaintiff is incapable of giving a retainer is to refuse to allow the action to proceed: see the judgment of Lord Parker of Waddington in *Daimler Co., Ltd.* v. *Continental Tyre & Rubber Co. (Great Britain), Ltd.* [1916] 2 A.C. 307, at p. 337. From what I have said and from these authorities alone, it is clear that a solicitor's liability in the case which I have suggested may be a very serious matter for him.

But there is another aspect of the matter, namely, the fact that by the wording of s. 296, upon dissolution, all property and rights whatever vested in or held in trust for the company immediately before that date go as *bona vacantia* to the Crown. Therefore if the company is dissolved at some time between the date of the issue of writ and the date of judgment, it appears that the action would lapse; and if the Crown had a right of action, presumably it could start fresh proceedings. Whether this would affect the solicitor's liability when his client became non-existent raises some nice points which I have not the time or the space here to discuss. This much must, I think, be clear: damages which the solicitor recovers from the defendant are the property of the company. But if after judgment and before satisfaction by the defendant the solicitor discovers the plaintiff company is non-existent, he must decide to whom the damages are to be paid when he recovers them. He cannot keep them himself: that is common sense. Nor can he pay them to the company which now is no more. One solution might well be that he holds them in a fiduciary position upon trust to pay them over to the Crown as *bona vacantia*, being property either "vested in" or "held in trust for" the company. This view is open to criticism that the property was not vested or held in trust immediately before the dissolution of the company: but, on the other hand, the right to receive the damages, conferred by judgment, might be considered so vested or held in trust.

It is apparent from what I have said that ss. 295 and 296 may, in practice, raise some very unpleasant queries; and my object has been to suggest a few of these, to provide my readers with some food for thought on a subject which, for the practising solicitor, may be most important.

NEW KING'S COUNSEL.

The following new King's Counsel were called within the Bar at the Law Courts last Tuesday: Mr. Paul Ernest Sandlands, Mr. Ralph Sutton, Mr. Jacques Abady, Mr. St. John Hutchinson, Mr. John Henry Thorpe, Mr. Cuthbert Snowball Rewcastle, Mr. Wintringham Norton Stable, Mr. Godfrey Russell Vick, Mr. Arthur Malcolm Trustram Eve, Mr. Kenneth Sydney Carpmael, Mr. Frederic Aked Sellers, Mr. David Davies, Mr. Henry Urmston Willink, Mr. Charles Eustace Harman, Mr. John William Morris and Mr. Cyril John Radcliffe.

A Conveyancer's Diary.

Position of Mortgagee Parting with Deeds.

I HAVE again had my attention called to a case where there has been a difficulty in deciding what is to be done where a mortgagor desires to raise a mortgage on property which is already mortgaged to a first mortgagee who is in possession of the title deeds and there are several subsequent mortgages registered as puisne mortgages.

A mortgagor having mortgaged his land in that way finds that he can raise no more, but his bank is willing to advance money on a first mortgage if all the existing mortgagees are prepared to postpone their securities. In fact in the case I have in mind the first mortgagee is a relative of the mortgagor and so willing to oblige him, but he wants to keep priority as against the subsequent mortgagees.

Before 1926 a deed could have been prepared which would have answered the purpose. All the mortgagees could have joined with the mortgagor in a mortgage to the bank, and declared that as between themselves their priorities should be preserved. The legal estate would have been in the bank, and all the other mortgagees would have been equitable mortgagees with priority in order of date.

The main difficulty appears to be that the first mortgagee by parting with the title deeds to the bank would at once become a puisne mortgagee.

It will be remembered that a puisne mortgage is "any legal mortgage not being protected by a deposit of documents relating to the legal estate affected and (where the whole of the land affected is within the jurisdiction of a local deeds registry) not being registered in the local deeds register" (L.C.A., 1925, s. 10 (1) class C (i)).

I am not dealing with a case where the land is within the jurisdiction of a local deeds registry.

Now, it is clear that when the first mortgage was effected, it was not a puisne mortgage, and consequently required no registration under the L.C.A. If however the mortgagee parts with his deeds in the circumstances suggested, he may immediately become a puisne mortgagee.

The L.C.A. does not provide for a case of that kind. What does "not being a mortgage protected" mean? Does it mean not protected at the time that it was created, or not at some subsequent time so protected?

It seems to me that it means not protected at any time when the question of priority comes to be considered. If that is right and a first mortgagee did in fact execute such a deed as I have mentioned and part with the deeds, then at once his mortgage becomes a puisne mortgage.

It may be asked: What difference does that make if all the other puisne mortgagees have agreed to his having priority?

Well, I think that it may make all the difference.

Section 97 of the L.P.A., 1925, enacts:—

> "Every mortgage affecting a legal estate in land made after the commencement of this Act whether legal or equitable (not being a mortgage protected by the deposit of documents relating to the legal estate affected) shall rank according to its date of registration as a land charge pursuant to the Land Charges Act 1925."

Consequently in such a case the first mortgagee finds himself in the unfortunate position of a puisne mortgagee who must register his mortgage and his mortgage will under that section rank after all the other puisne mortgagees.

It might be possible to devise a deed of covenant which would in a sense meet the case, but of course the first mortgagee would not want to rely upon covenant.

It does not appear possible for the first mortgagee to register his mortgage so as to take priority over the other registered mortgagees with their consent. I do not see why he should not be able to do so, but I can find no provision which would enable the registrar to give effect to that.

Further, I do not think that the first mortgagee could set up any priority by right of the deed declaring that the priorities should be preserved or by right of any deed of covenant.

Section 97 of the L.P.A. is emphatic, and as I think declares how the priorities are to be determined, notwithstanding any such arrangement between the parties. Possibly that was deliberate, but I doubt it. If the point had occurred to the draftsman he would probably have said "subject to any agreement to the contrary between the registered mortgagees," or something of that kind.

Then it seems that all that can be done is for the first mortgagee and the puisne mortgagees to surrender to the mortgagor and for him to create new mortgages in the order which they are to be entitled. If that were done, of course the puisne mortgages would have to be struck off the register—and then all but the bank would have to register in due order.

Of course, I may be wrong in saying that when a mortgagee who holds the deeds afterwards parts with them he becomes a puisne mortgagee. It may be that "protected" means "protected at the date of the creation of the mortgage." But that is hardly likely to be held to be the true construction.

Perhaps the same question might arise where the first mortgagee, say, deposited the deeds with a bank as security for a loan to himself. He would certainly not hold the deeds, and it might be said that therefore his mortgage ceased to be protected by a deposit of them. In that case, however, he has a right of redemption and can always secure possession of the deeds again by paying off the advance.

I can think of a case where a mortgagee, having included the mortgage in a settlement, handed the deeds to the trustees, but for some reason no transfer was executed for some time afterwards. In fact, he died before that was done, and his personal representatives after some delay transferred. In such circumstances, of course, the mortgage did not cease to be "protected" by deposit of the deeds.

Again, if the deeds were lost the mortgage would still be protected by them for whoever happened to be in actual possession of them would hold them for the mortgagee.

It is perhaps more difficult in fact to say that a mortgage is protected by the deposit of documents which have been destroyed, but it would be absurd to suggest that the mortgagee became a puisne mortgagee because the deeds had been burnt.

These examples certainly go to some extent to show that "protected by a deposit of documents" means so protected at the time the mortgage was created and not by a continuous holding of the documents.

Nevertheless, I think that if a first mortgagee did part with the deeds to another mortgagee, agreeing that the latter should have priority, he would become a puisne mortgagee.

I was asked a conundrum by a solicitor (not professionally) recently. Suppose a mortgagor created a mortgage and handed over all the recent deeds, in fact, all that the mortgagee required to show a title, and then created a second mortgage (expressly subject to the first) and let the second mortgagee have some old deeds which he had retained, never having been asked for them by the first mortgagee. Would the second mortgagee be a puisne mortgagee and so obliged to register? The second mortgage would certainly be "protected by a deposit of documents relating to the legal estate affected," although there would in reality be no protection afforded by the documents. I should not care to advise the second mortgagee not to register.

That conundrum was, of course, not seriously put, but it is a serious question sometimes to decide what documents are sufficient for the purpose.

Mr. Charles Edward Barry, LL.D., solicitor, of Bristol, President of The Law Society 1932-33, left estate of the gross value of £11,227, with net personalty £39,921.

Landlord and Tenant Notebook.

Freedom and Cost of Alienation by Tenant.

THE attitude of the law towards a tenant's right to assign and sub-let is now fairly well defined. By consulting a couple of statutes and a few leading cases, it is possible for parties to ascertain their position with reasonable certainty. What is now L.P.A., s. 144, prohibits a landlord whose consent is required from demanding a fine or sum of money as a condition of consent; s. 205 (1) (xxiii), *ibid*, enacts that "fine" includes premium, foregift or payment, consideration or benefit in the nature of a fine, premium or foregift. L.T.A., 1927, s. 19 (1), imports (if necessary) into a covenant prohibiting alienation without consent a qualification to the effect that consent is not to be unreasonably withheld. Both enactments expressly save the right to require a reasonable sum in respect of legal or other expenses incurred in connection with licence or consent.

It has been held that L.P.A., s. 144, is not infringed by a stipulation that a proposed assignee shall covenant to pay the rent and perform the existing covenants (a proceeding which has, of course, the value of a gesture only): *Waite* v. *Jennings* [1906] 2 K.B. 11, C.A.; but a condition that a "free" public-house shall become "tied" is a benefit in the nature of a premium: *Gardner & Co.* v. *Cone* [1928] Ch. 955. The mere request by a landlord of such a benefit is, according to *West* v. *Gwynne* [1911] 2 Ch. 1, C.A., and *Andrew* v. *Bridgman* [1908] 1 K.B. 596, C.A., sufficient to absolve the covenantor from further obligation in the matter of obtaining consent; but the latter decision lays it down that a tenant who complies with a demand of money cannot recover it, the mistake being one of law.

The question of what constitutes a reasonable refusal has, like most questions in which reasonableness is in issue, been the subject-matter of a great deal of litigation. Some years ago it looked as if we had arrived at a principle: in *Houlder Bros. & Co. Ltd.* v. *Gibbs* [1925] Ch. 575, C.A., Warrington, L.J., enunciated the following: [the covenant] "was intended to protect the lessor against a lessee who, although respectable and responsible, might well be reasonably objectionable in other ways, or, secondly, from the point of view of the property, to prevent the lessor from having to accept a lessee whose user of the property might again be reasonably objectionable. The user of the property, to be reasonably objectionable, need not necessarily be objectionable to the lessor as lessor of that particular property . . . I think you must find in the objection something which connects it either with the personality of the intended assignee . . . or with the user which he is likely to make of the property . . ." This, as a definition, does not, of course, carry us very far; just as the stock definition of "negligence" uses the word "unreasonable" as if everybody knew what that meant, so this pronouncement uses "objectionable" in defining "reasonable"; and the limitation as to personality and user, while valuable, does not carry the matter much farther. Moreover, the importance of the reservation in the sentence ending "that particular property" has since been emphasised in *Premier Confectionery (London) Co. Ltd.* v. *London Commercial Sale Rooms Ltd.* [1933] 1 Ch. 904; a tobacco kiosk and a tobacco shop were held under separate agreements, each limiting the premises to that particular user, and the lessors' refusal to consent to the assignment of the kiosk only was upheld as being reasonable.

The references as to costs in L.P.A., 1925, s. 144, and L.T.A. 1927, also, as will have been observed, use the word "reasonable." Here one would have expected a wealth of authority illustrating the rights of the parties, but the reports are strangely silent on the question. The statutes do not, it is worth noting, either create or declare any right, and it cannot be said that there is a usage by which an applicant for a licence to assign or sub-let is liable for costs in the absence of previous agreement to the contrary. The usage by which a tenant pays the landlord's costs of the lease is well established and supported by authority, but on the question of licences to alienate the Council of The Law Society pronounced, in 1904, an opinion that it was "customary" for lessees to pay reasonable fees, though in the case before them there appeared to be no legal obligation to that effect: and as the "case before them" presented no special features, I take it that the custom has not the force of law. Presumably nothing was said about costs when the application was answered. That the custom is much observed, I do not doubt; and when the applicant for consent is an under-tenant or sub-under-tenant of premises on one of the London estates, he often pays considerable sums in settlement of the reasonable costs of mesne and head lessors' solicitors.

As to what is reasonable, no one seems yet to have disputed to the extent of litigation the reasonableness of even ducal, hospital, or ecclesiastical solicitors; and all that the Council of The Law Society appears to have been called upon to say is, whether the costs might include the costs of taking up references of proposed alienees and whether, if the lessor insisted on a copy of a proposed underlease being attached to the licence, the lessee was bound to supply it. The former question was answered in the affirmative, the latter (which does not, of course, strictly relate to the question of reasonableness of costs) in the negative.

So the only recommendation I can make to tenants who respect custom is to use circumspection when applying for licences, for the price of freedom of alienation is occasionally vigilance.

Our County Court Letter.

FARM BAILIFF'S LENGTH OF NOTICE.

IN the recent case of *Smith* v. *Wicks*, at Stow-on-the-Wold County Court, the claim was for £45 5s. as damages for breach of a hiring agreement. The plaintiff's case was that by an agreement in writing dated the 23rd September, 1934, he was employed as farm bailiff at a salary of £3 a week, to be increased to £3 10s. a week after three months, with a yearly bonus of 5 per cent. on the profits. The duties were performed from the 1st to the 8th October, 1934, when the plaintiff was given notice to leave on the 13th October. He therefore claimed £39 as three months' wages in lieu of notice, plus £6 5s. bonus. A former employee of the defendant stated that the farm contained 500 acres, and was so neglected that it would take two years to clear up. The plaintiff had, therefore, no opportunity of showing any improvement in a week, but the defendant's case was that the milk disposal book had not been entered up, and the various meals and feeding stuffs were mixed up in the granary, which the plaintiff refused to clean. The defendant was therefore entitled to dismiss the plaintiff, who in any case was only entitled to a month's wages and bonus, which had been paid into court, with a denial of liability. His Honour Judge Kennedy, K.C., gave judgment for the defendant, with costs, and payment out of the sum in court.

THE POWERS OF MARKETING BOARDS.

THE above subject has been considered in two recent cases. In *The Pigs Marketing Board* v. *Mann*, at Chelmsford County Court, the claim was for £48 as damages for breach of contract, viz., £1 for each of forty-eight pigs which the defendant had failed to deliver to the Dunmow Flitch Bacon Company. The defence was that (*a*) no damage had been suffered; (*b*) no effort to mitigate the damage (if any) had been made; (*c*) the £1 was not liquidated damages, but was a penalty and irrecoverable. His Honour Judge Hildesley, K.C., observed that the plaintiffs were under obligation to deliver pigs to the

curers, or to pay damages as agreed with the Bacon Marketing Board. By reason of the defendant's default, the plaintiffs' fund had been deprived of 1s. 2d. per pig, and some damage had been suffered. There was no duty to try to mitigate damages, as the market was necessarily restricted, and pigs could only be obtained at enhanced prices. The agreed sum per pig was a genuine pre-estimate and not a stipulation *in terrorem*, as a precise assessment of damages was almost impossible. Judgment was therefore given for the plaintiffs, with costs.

In *The Milk Marketing Board* v. *Crawshaw*, at Westminster County Court, the claim was for £5 13s. 6d. as unpaid levies under the Milk Marketing Scheme. The defendant was a registered producer, and had been licensed on the 25th October, 1933, but in November and December, 1933, and from January to September, 1934, he had sold 2,000 gallons of milk without paying the levies. The defendant's case was that he was not a dairy farmer, but a medical man engaged in research work, viz., the production of milk superior to certified, Grade A and T.T. milk. He had merely sold his surplus, and was outside the Scheme. It was pointed out for the plaintiffs that, in order to obtain exemption, the defendant should obtain a licence from the Ministry of Health, as a producer of certified milk. His Honour Judge Dumas expressed sympathy with the defendant, who had no answer in law. Judgment was therefore given for the plaintiffs with costs.

THE SALE OF LIQUID SOAP.

In *Hatton* v. *Oulton*, recently heard at Liverpool County Court, the claim was for damages and an injunction restraining the defendant from selling soap as "Ton Tah" or as the plaintiff's product. The plaintiff had manufactured liquid soap since 1928, and had employed the defendant (his brother-in-law) as a canvasser. Having been dismissed in August, 1934, the defendant had nevertheless continued to call on the customers, representing that he had taken over the business. He also sold soap in the same type of cans, and bearing similar labels to those of the plaintiff, whose sales had decreased by £2 15s. a week. The defendant's case was that he had been in partnership with the plaintiff, and, having never renounced his rights as a partner, he had made soap from the same recipe, but had called it "Livo." His Honour Judge Dowdall, K.C., held that the partnership, if any, was dissolved in August, 1934, and 10,000 labels had been printed with the express object of passing off "Livo" as "Ton Tah." Judgment was accordingly given for the plaintiff for £25 and costs; an injunction was also granted as asked, and an order was made for delivery up of the labels.

Reviews.

The Law of Repairs and Dilapidations. By Sir T. Cato Worsfold, Bt., M.A., LL.D., J.P., D.L., Solicitor of the Supreme Court. Second Edition. 1934. Crown 8vo. pp. xxi and (with Index) 211. London: Sir Isaac Pitman and Sons, Ltd. 7s. 6d. net.

Since the first edition of this handy little book was compiled, a considerable amount of legislation and a number of important legal decisions on the law of repairs have intervened, and the present volume has been amplified and adjusted to include these. It also embodies new material in regard to ecclesiastical dilapidations and repairs under the Rent Restrictions Acts, and new legislation increasing the powers of interference on the part of local authorities. There is much to be said at the present time on matters arising under the Housing Acts, and this adds to the justification for publishing a second and revised edition of a work of this kind. The author has included references to a very large number of leading cases and as an illustration of the enlargement which has been effected in the preparation of this present edition, it may be mentioned that there is an appendix embodying the provisions of the Third Schedule to the Settled Land Act, 1925, which relates to improvements, the position of trustees in relation thereto, and the incidence of costs. Altogether a very handy little book which enables the practitioner to get quickly to the heart of any problem touching the subject-matter.

Mather on Sheriff and Execution Law. Third Edition, 1935. By C. R. Wigan, M.A. (Oxon), Solicitor and Under-Sheriff for Surrey, and The Hon. Dougall Meston, of Lincoln's Inn and the South-Eastern Circuit, Barrister-at-Law. Royal 8vo. pp. xci and (with Index) 702. London: Stevens & Sons Limited; Sweet & Maxwell, Limited. £2 2s. net.

The publication after thirty-two years of a new edition of "Mather on Sheriff and Execution Law" is a legal event of some importance. The learned editors have succeeded in their plan of preserving the original design and arrangement of the work, while at the same time incorporating all the relevant statutes, orders, and cases relating to the subjects dealt with. An addition of some interest is contained in the first two chapters, which give a short historical account of the office of sheriff. It was felt, the editors say in their preface, that this "might supply a want often expressed by sheriffs-designate who desire to understand the full significance of the office upon which they are entering." The volume is as complete and practical a compendium as could be desired. Here, besides the detailed chapters on the various writs of execution, the busy practitioner will find excellent instruction on the inter-action of the Bankruptcy Act, 1914, the Bills of Sale Acts, 1878–82, and the Companies Act, 1929, on the law affecting executions. A particularly good example of the exhaustiveness and painstaking accuracy of the survey is to be found in pp. 432–436, where the learned editors deal with "Completion of Execution" within ss. 40 and 41 of the Bankruptcy Act, 1914, and the cases thereunder, beginning with *Figg* v. *Moore Brothers* [1894] 2 Q.B. 690, and ending with *Re Brelsford* [1932] 1 Ch. 24, and *Re Kern* [1932] 1 Ch. 555. *Re Godwin* (78 Sol. J. 930), was decided a few months too late for incorporation in the present edition. The learned editors carefully set out the facts of all the cases with a statement of what was actually decided, thus enabling the reader to distinguish the facts. This is a procedure which is peculiarly apt to this topic, and is therefore, not generally adopted in the work, the most suitable method for each subject being adopted in each case. All the necessary forms are provided and the method of incorporating them in the relevant parts of the text has been adopted instead of relegating them to an index. The new edition will be heartily welcomed by both branches of the legal profession.

Law of Procedure. By W. Nembhard Hibbert, LL.D. (Lond.), of the Middle Temple, Barrister-at-Law. Fifth Edition. 1935. Demy 8vo. pp. xv and (with Index) 135. London: Sir Isaac Pitman & Sons, Ltd. 7s. 6d. net.

The first edition of this volume was issued in 1915, and the fact that four editions have been exhausted since that time and that a new one has been called for is in itself a sufficient indication of the value of Dr. Hibbert's work. The volume furnishes in concise and simple form a complete guide to civil procedure and it is specially to be recommended to the law student, to whichever branch of the profession he intends to devote his energies. The new matter embodied in the present volume includes changes made in the County Courts Act, 1934, affecting the right to have a jury and the jurisdiction of the court now extended to actions for the recovery of land and to cases where the title to hereditaments comes in question up to the £100 limit.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Easement of Drainage.

Q. 3128. A has recently purchased certain freehold premises, the drains from which pass under adjoining land recently purchased by B to a manhole on B's land, and thence into the main sewer. A has recently had trouble with his drains, and it has been discovered that fractures have taken place in the pipes under B's land, due probably to the fact that B has recently erected certain buildings (for which separate drains were laid) over the course of the drains. A's premises were erected, and the drains laid, over thirty years ago, at which time both A's and B's land were in common ownership. There is no mention in the original conveyance of A's site of the right to lay drains under the adjoining land, the only provision in this connection being that the original vendor should have power to use any drain under A's land. Neither A nor B was aware of the course of A's drains until the stoppage in question occurred. A has now been called upon to abate the nuisance arising from the stoppage of the drains and information is desired as to his position in the matter and particularly :—

(*a*) Whether he can enter upon B's land to effect the necessary repairs, more especially in view of the fact that buildings are now erected over portions of the drains in question ?

(*b*) Whether alternatively, A is entitled to have other drains laid under B's land at B's expense ?

A. On the severance of the titles of the plots now owned by A and B, there was an implied reservation (in favour of A) of the right to use the drains under B's land. This implied further a right of entry by A upon B's land, and also an obligation upon B not to disturb or interfere with A's easement. In spite of the age of the drains (which might account to some extent for the stoppage) there is evidence of disturbance by B., viz., by erecting buildings over the drains. On the points raised :—

(*a*) A can enter upon B's land to effect the necessary repairs, even if this interferes with the new buildings.

(*b*) A can only claim to have other drains laid (at B's expense) if the new buildings render the old drains inaccessible. In any case, however, B may prefer to offer new drains, as an alternative to having his new buildings disturbed.

Clandestine Removal of Tenant's Goods.

Q. 3129. (1) A, who was a weekly tenant of No. 2, Green-street, gave his landlord on the 6th November one week's notice to terminate the tenancy of the house, the notice expiring on the 14th November. At the time of handing in the notice A was in arrears with his rent to the amount of £3 3s. On the 9th November the landlord discovered that A had vacated the house and was in residence at No. 15, Green-street. A having removed his goods without the landlord's knowledge and before the notice had expired, can the landlord's bailiff follow and distrain upon A's goods at No. 15, Green-street, for the full amount of the rent arrears ?

(2) B, being in arrears with his rent, removed all his goods to another house without having given his landlord any notice of his intention to terminate the tenancy. Can the landlord's bailiff, within a certain time, follow and distrain upon B's goods at B's new residence for the arrears of rent due to the landlord at the time the goods were clandestinely removed ?

A. (1) As the tenant gave up possession before the expiration of the tenancy, and there is evidence that the removal was fraudulent, the landlord can distrain at the new address within thirty days for the £3 3s. under the Distress for Rent Act, 1737.

(2) As B's tenancy had not expired, the landlord can follow and distrain upon B's goods within thirty days, under the above Act. A jury would be satisfied as to the removal being fraudulent, as the landlord is left to his barren right of suing for the rent. See *Opperman* v. *Smith* (1824), 4 D. & R. 33.

Mortgage—Deeds Lost.

Q. 3130. A purchased a house more than thirty years ago. B (a firm of solicitors) acted for her and carried out a mortgage of the property to secure £150 to C. C died about ten years ago. D (a firm of solicitors) has collected the interest on the mortgage on behalf of the executors of C. A has given notice of intention to pay off the mortgage, but both B and D say that the deeds of the property are not in their possession, nor can they find any drafts of the conveyance or mortgage. C and D are unable to make any satisfactory statutory declaration as to the facts and it would be very difficult to make a satisfactory possessory title. Kindly advise—

(1) As to A's right of action against C's executors.

(2) Generally upon the matter.

A. It is exceedingly difficult to know what to advise. C, the mortgagee, was, it is considered, in a position analogous to that of a bailee, and his estate is *primâ facie* responsible for the loss of the deeds. In an action for redemption by a mortgagor the latter is entitled to a decree for reconveyance (or, now, a release by receipt) and delivery of the deeds. Possibly the best course is to tender a form of receipt to be endorsed on the mortgage by the executors of C, and then, on the day the notice expires, to make a formal tender of the amount of the principal and interest and a reasonable sum for costs, asking for the deeds and endorsed receipt and then refuse to pay any more interest. It seems such a tender would relieve the mortgagor (*Webb* v. *Crosse* [1912] 1 Ch. 323, and *Hocken* v. *Sincock* (1865), 34 L.J. Ch. 435), and would throw on C's executors the costs of a subsequent redemption action. When C died the mortgage would be disclosed in the affidavit of his executors for Inland Revenue.

Conveyance in Trust for Boy Scouts, etc.—Appointment of New Trustees.

Q. 3131. By a voluntary conveyance in 1927, certain property was conveyed to four trustees in trust for the use of the members of the local boy scouts and girl guides and to be sold, leased, mortgaged or otherwise dealt with by the trustees, etc. There is no express power of appointment of new trustees. There is no present intention of selling or otherwise dealing with the property, but one of the trustees having left the district, she is desirous of retiring from the trust, and a local resident has consented to fill her place. Under the joint operation of s. 36 (1) (*b*) and s. 40 (1) (*b*) of the T.A., 1925, is it sufficient to prepare a deed of appointment whereby the three continuing trustees "in exercise of the power given to them by the said conveyance and of every other power them enabling" appoint the new trustee to be a trustee in place of the retiring trustee and jointly with the

continuing trustees? We presume that this will be sufficient without any express declaration as to vesting, and that the stamp will be £1.

A. There appears to be no reason why the new trustee should not be appointed by the existing trustees in the ordinary way. The retiring trustee is a continuing trustee for the purpose of concurring in the appointment: s. 36 (8). A 10s. stamp only is required if there is no express vesting declaration inserted and no conveyance of the property. It is not quite clear if the original conveyance was a conveyance on trust for sale, but it would be well to treat it as such and endorse the memorandum required by s. 35 (3).

Widow of Intestate BORROWING ON SECURITY OF HER £1,000 CHARGE.

Q. 3132. A man dies intestate leaving a widow and four children, all under age. Letters of administration have been taken out by the widow and the deceased's sister. The intestate leaves unincumbered property, and, of course, the residuary estate is charged with the payment to the widow of £1,000. This £1,000 has not been received by the widow, and it is not intended to deal with the whole matter until the children attain the age of twenty-one years. The widow is desirous of borrowing a sum of money and does not wish to bring into the transaction her sister-in-law, the other administratrix. Your opinion is requested as to whether she can charge her definite proportion of such residuary estate for securing payment of the amount to be borrowed, pending the payment to her of the said sum of £1,000 and interest, and, if so, the nature of the charge.

A. The widow has a statutory charge for the £1,000 and interest, and there is no reason why she should not mortgage it. The facts can be recited, and she can assign the £1,000 and interest and the benefit of the statutory charge therefor subject to redemption on payment of the amount lent and the agreed interest. Notice must be given to the administrators. Of course, the fact that the widow is one of the administrators makes the security depend to some extent on her integrity, as she may become sole administratrix and, as such, could dispose of all personal estate.

Liability for Motor Accident.

Q. 3133. D is the owner of a car which is driven by M, accompanied by D, W and C, when there is a crash resulting in the death of W. D and C receive minor injuries but M, the driver (who is accompanied in the front seat of the car by W), receives extensive injuries from which he has not yet recovered. The allegation made by representatives of W and C is that the accident occurred as a result of the excessive speed of the car when driven by M, who had apparently lost control of the vehicle. There was no impact with any other vehicle and as the inquest has not yet been held, the statements of the various occupants of the car have not yet been disclosed. If it is proved conclusively that M was guilty of negligence in that he drove at such a speed as not to have proper control of the car, despite protestations having been made by the owner D, sitting in the rear of the vehicle, can M recover damages from D's insurance company? If negligence is not proved, what is the position in respect of a claim for damages being made by C and M?

A. M will be disentitled (by reason of his own negligence) from recovering damages from D's insurance company. In other words, M cannot take advantage of his own wrong. The first question is therefore answered in the negative. If negligence is not proved, claims for damages by C and M would necessarily fail, as the whole basis of the policy is insurance against negligence. If, for example, the loss of control was due to a mechanical breakdown, the injuries were not due to negligence—unless there had been a lack of proper inspection of the machinery or fittings of the car. On the question of the owner's liability, while a passenger in his own car, see *Pratt* v. *Patrick* [1924] 1 K.B. 488.

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

Searches.

Sir,—I have read with interest the "Conveyancer's Diary" contained in your issue of 2nd February, and although not wishing to dispute the accuracy of the writer's conclusions so far as the theory is concerned, may I give below an example of the practical result of following his advice in relation to the registration of estate contracts.

John Bloggs was a wealthy landowner, who in 1926 owned all the land in the Parish of Mudford, comprising several thousand acres. Since 1926 the parish has been developed as a residential area, and 500 houses have been erected and sold to different owners, all of whom duly registered their contracts on the occasions of their respective purchases. When the sales were completed, none of the purchasers' solicitors felt it necessary to put their clients to the expense of removing the entries from the register, and there was no obligation upon them to do so.

In 1935 George Scroggs contracts to buy from John Bloggs for £5 a small plot of garden ground in the Parish of Mudford. On the day prior to completion, George Scroggs' solicitors apply for an official search in land charges which duly arrives on the morning of completion with the following somewhat cryptic result.

"No subsisting entries. Note: The following entries which may or may not relate thereto appear." Here follow (on several fly-sheets) particulars of 500 estate contracts affecting land in the Parish of Mudford, but with no descriptions of the particular plots of land which they affect.

It is now the duty of George Scroggs' solicitors to ascertain that none of the 500 contracts affect his client's purchase, and the only way in which he can do this is to go to the Registry and inspect them all, paying a further search fee of 1s. for each entry.

On the assumption that he can inspect the entries at the rate of one every two minutes, this task will take him over sixteen hours. Assuming that the purchase in question is not the only job of work in his office, he will of course telephone to the vendor's solicitors that he cannot complete for at least another week, by which time his official search will be out of date

George Scroggs will in due course receive the following bill from his solicitor:—

	£ s. d.	£ s. d.
Scale fee for purchase of garden land (consideration £5) including attendances totalling sixteen hours at Land Registry		3 12 0
Disbursements.		
Stamp on conveyance ..	0 0 6	
Search fees.		
Local land charges ..	0 5 0	
Official searches (2) in land charges	0 3 0	
500 extra hand searches at 1s.	25 0 0	
Fee for registering estate contract	0 1 0	
		25 9 6
		£29 1 6

George Scroggs now sincerely wishes that he had remained coveting the land and that he had not had to pay for the cautiousness of the solicitors to the 500 previous purchasers.

The Land Charges Act, 1925, simplifies and cheapens conveyancing.

New-square, W.C.2. RICHARD M. SNOW.
5th February.

To-day and Yesterday.

LEGAL CALENDAR.

11 FEBRUARY.—John Eardley Wilmot was "a man of great vivacity of parts and loving hunting and wine and not his profession." If he had had his way, he would have abandoned the law early in order to retire entirely to his native county of Derbyshire. Indeed, he refused a silk gown in 1753, and in the next year actually made a farewell speech in the court of Exchequer. But he was to have greatness thrust upon him, and on the 11th February, 1755, the persuasions of his friends and the demands of an increasing family forced him to accept appointment as a Justice of the King's Bench. Twelve years later he was just as reluctantly compelled to become Chief Justice of the Common Pleas.

12 FEBRUARY.—On the 12th February, 1767, James Burnett succeeded Lord Milton as an ordinary Lord of Session, assuming the title of Lord Monboddo.

13 FEBRUARY.—"February 13, 1640, Sir Robert Berkley, one of the Judges of the King's Bench, who gave his opinion for Ship-money, was impeached by the Commons of High Treason in the Lords House, and by their Command, Maxwell the Usher of the Black Rod came to the King's Bench when the Judges were sitting, took Judge Berkley from off the Bench, and carried him away to Prison, which struck a great Terror in the rest of his Brethren then sitting in Westminster Hall and in all his Profession. This Judge was a very learned Man in our Laws."

14 FEBRUARY.—For the benefit of the incredulous, it is worth noting that the great sea serpent appeared by affidavit at the Liverpool Police Court on the 14th February, 1877, Mr. Thomas Raffles being then stipendiary magistrate. Captain Drevar of the "Pauline," his chief officer, second officer and steward signed a declaration that off Cape San Roque on the Brazilian coast they had seen a large sperm whale gripped round the body with two turns by a huge serpent 8 feet in girth, which, after a fifteen-minute struggle, dragged it under. A few days later they saw a similar serpent at a distance of 200 yards. It appeared over 60 feet long.

15 FEBRUARY.—In *The Liverpool Corporation* v. *Bolton*, heard in the King's Bench before Lord Tenterden on the 15th February, 1833, the whole history of Liverpool was reviewed in support of certain duties on imports which were claimed from a number of American merchants. The evidence showed how the lands on which the town stood had been in the possession of the Crown from the time of the Conqueror till that of Henry III, who granted the inhabitants these dues. Till the reign of Queen Anne, the foreign trade of the town had been insignificant and the tolls had barely exceeded £30 a year, but since then it had expanded so tremendously that they increased to £50,000. The verdict was for the corporation.

16 FEBRUARY.—On the 16th February, 1841, Lord Cardigan appeared before the House of Lords on a charge of shooting Captain Tuckett in a duel on Wimbledon Common. He escaped through a flaw in the indictment which alleged that he had shot at Harvey Garnett Phipps Tuckett, whereas the Crown's evidence only went to show that a person named Harvey Tuckett had been shot at. Lord Denman, sitting as Lord High Steward, gave it as his opinion that the accused should be acquitted, and one after another the lords declared him "Not guilty, upon my honour."

17 FEBRUARY.—On the 17th February, 1853, the Queen's Advocate applied to the Prerogative Court of Canterbury for the delivery out of the Registry of the will of Napoleon Bonaparte, in order that the Foreign Secretary might hand it over to the French Government. The judge ordered it to be sent to the legal authorities in France, considering especially that, though a prisoner, Napoleon was a domiciled Frenchman at the time of his death.

THE WEEK'S PERSONALITY.

Lord Monboddo was one of the most rugged and forceful personalities that ever claimed a place in the judicial history of Scotland. "He was a devout believer in the virtues of the heroic ages and the deterioration of civilised mankind: a great contemner of luxuries, insomuch that he never used a wheel carriage." Up to the age of eighty, his journeys from Edinburgh to London were accomplished on horseback. In 1782, Hannah More wrote of him: "He is such an extravagant adorer of the ancients that he scarcely allows the English language to be capable of any excellence, still less the French. He said we moderns are entirely degenerated. I asked in what? 'In everything,' was his answer. He loves slavery upon principle. I asked him how he could vindicate such an enormity. He owned it was because Plutarch justified it. He is so wedded to system that . . . rather than sacrifice his favourite opinion that men were born with tails he would be contented to wear one himself." He woke every morning at four and for his health got up and walked in his room naked with the window open which he called taking an air bath, after which he went to bed again and slept two hours more. He was a learned and upright judge, though his eccentricity caused him to sit, not among his fellow judges, but among the clerks.

THEFTS IN COURT.

In its Annual Statement, the Bar Council has declared that the question of admission to the well of the courts and their protection generally from thieves was outside its scope. The latter problem, I believe, is far from non-existent in the Paris Law Courts, which, indeed, not long ago, provided the supreme instance of impertinence in larceny. While a case was actually proceeding a workman entered with a ladder. The judge having suspended the proceedings, he climbed up and unhooked the clock from the wall, explaining that it had to be cleaned. The timepiece was carried out and has not been seen since. About the same time a judge returning to his private room, after dealing with thirty cases of theft, found that his overcoat had been stolen. In England, for the present at any rate, the problem is not acute, so far as concerns members of the Bench and Bar. In this connection, one cannot but recall the occasion when the future Chief Justice Campbell, then a law reporter, had his pocket book containing banknotes stolen in court. "What!" exclaimed Chief Baron Macdonald. "Does Mr. Campbell think that no one is entitled to take notes in court except himself?"

FATHER AND SON.

In a short time, Mr. Justice Bucknill has very solidly established himself in the office which his father held before him. Reasoning from judicial heredity, no choice could have been happier than the son of a judge who never said or did an unkind thing. He was intensely human, and once he confessed to having been a short-term prisoner in his time. As a child, he had wandered in Bosworth Park and fallen into the hands of gipsies. When he was found, his grandfather punished him by putting him into the prison at Bosworth for an hour, after which he wept and was released on ticket of leave. The most dramatic case over which he ever presided was the Seddon poisoning trial, and at its climax the profound emotion which he could not help displaying on sentencing to death a brother Freemason made his exhortation to the prisoner one of the most affecting moments in modern legal history. His voice was so choked by sobs that his words were almost inaudible.

Mr. Henry George Cyril Day, solicitor, of Heswall, Cheshire, left £11,271, with net personalty £9,832.

Notes of Cases.

House of Lords.

British Celanese Ltd. *v.* Courtaulds Ltd.

Lord Tomlin, Lord Russell of Killowen and Lord Macmillan. 11th February, 1935.

Patent—Artificial Silk—Patentable Matter—Infringement—Validity—Want of Novelty—Expert Witnesses.

This was an appeal from the Court of Appeal (Lord Tomlin, Lord Russell and Lord Macmillan) dismissing the plaintiffs' appeal from Clauson, J., in the action in which Celanese Limited claimed an injunction to restrain the defendants from infringing letters patent relating to the manufacture of artificial silk. The defendants denied having infringed the letters patent, and said that each of the letters patent was and always had been invalid, and they counter-claimed for revocation. The plaintiffs were the pioneers in the production of acetate silk, which was known by the name of "Celanese." The plaintiffs alleged that acetate silk had never been produced commercially before 1920, the date of the plaintiffs' first patent. Clauson, J., dismissed the action, and ordered revocation of the three letters patent then in question. Celanese Limited appealed, and the court dismissed the appeal, and Celanese Limited now appealed to the House of Lords.

Lord Tomlin, in giving judgment, said it was admitted that what the respondents were doing amounted to infringement, and the only question was as to validity. On the point of obviousness it seemed to him reasonably plain that having regard to the common general knowledge of 1920 what was done was obvious. Those considerations were in his opinion sufficient to dispose of the appellants' case, and with regard to the second patent it was enough to say that he agreed with the courts below in their conclusions and in their reasoning. There remained one other topic upon which he desired to call attention. The proceedings in the trial court provided an illustration of the licence which in these days in cases of this kind was enjoyed by expert witnesses. In his judgment the time had come to curtail that licence whatever were the difficulties involved in doing so. He was not entitled to say, nor was counsel entitled to ask him, what a specification meant, nor did a question become any more admissible if it took the form of asking what it meant to him as an engineer or as a chemist. Nor was he entitled to say whether any given step or alteration was obvious, that being a question for the court. In the present case much time was occupied and substantial parts of the shorthand notes had been filled with questions and answers which in his opinion were not admissible. Trial courts should make strenuous efforts to put a check on an undesirable and growing practice. He had reached the conclusion that the appeal failed and ought to be dismissed with costs.

Lord Russell of Killowen gave judgment to the same effect, and Lord Macmillan concurred.

Counsel: *Wilfrid Greene*, K.C., *K. E. Shelley*, *P. Stuart Bevan*, and *Claude Bonard*, for the appellants: *J. Whitehead*, K.C., *Sir Stafford Cripps*, K.C., *Trevor Watson*, K.C., and *Geoffrey W. Tookey*, for the respondents.

Solicitors: *Mayo, Elder & Rutherfords; Bristows, Cooke and Carpmael.*

[Reported by S. E. Williams, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Elderton *v.* United Kingdom Totalisator Co. Limited.

Eve, J. 18th January—7th February, 1935.

Betting and Lotteries — Football Pools — Prize Competitions—Future Events—Forecast of Goals—Betting and Lotteries Act, 1934, s. 26.

This was a motion in an action raising the question whether a football pool advertised in a newspaper was a prize competition for the forecast of a future event within the prohibition of s. 26 of the Betting and Lotteries Act, 1934. The plaintiff, Thomas William Elderton, a shareholder and one of the directors of the defendant company, claimed an injunction to restrain the defendant company from conducting through a newspaper known as *The Winner*, or any other newspaper, any competition in which prizes were offered for forecasts of the results of football matches contrary to s. 26 of the Betting and Lotteries Act, 1914. The football pools in question were conducted as follows: coupons containing a list of a number of matches then about to be played were published, and members of the public were invited to fill up the coupons with their forecasts of the results of the matches and with the amounts of stakes and to forward the coupons so filled up to the Company before the determination of the result. Participants whose forecasts were proved to be incorrect were required to forward the amount of their stakes to the company, and the total amount invested by the investors, less 10 per cent., was distributed by the company among those whose forecasts proved to be correct. There was another pool advertised by the company described as a "goals points pool," in which no results were required from the competitor, who had merely to forecast the number of goals scored on both sides in each of five selected matches. Consolation prizes were offered to unsuccessful competitors in this pool.

Eve, J., in giving judgment said the particular operations to which the plaintiff took exception and on which the claim to an injunction was founded were the United Kingdom Totalisator Football Pool No. 6 and the United Kingdom Goal Points Pool. Both were conducted through *The Winner*, and in the second it was clearly a competition in which prizes were offered for forecasts of future events. The defendant company did not contend that that was not within s. 26 and they offered to discontinue operating that kind of pool in the future. It should be noted that pool betting was recognised as a lawful business when the Act was passed, and was one of the four classes of betting on which restrictions were imposed. The restrictions were to be found in s. 3, and it was not suggested that the company had in any way contravened that section. The advertisements and rules were framed to keep the operations within the statutory restrictions and to avoid anything in the nature of ready-money betting. Such being the relations subsisting between the parties and their clients, where was there any justification for asserting that the operations were not part of the pool betting business regulated by s. 3, but were prize competitions within s. 26. If so, who were the competitors and where were the prizes?

Counsel: *P. B. Morle; Beyfus*, K.C., and *R. F. Levy.*

Solicitors: *Samuel Coleman; Percy Bono & Griffith.*

[Reported by S. E. Williams, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Attorney-General *v.* Valle-Jones.

MacKinnon, J. 7th February, 1935.

Master and Servant—Government Employee—Injured in Motor Accident—Crown's Claim for Loss of Services and Expenses incurred—Latin Information.

In this action the Attorney-General, on behalf of the Crown, claimed by Latin information to recover from Frederick William Valle-Jones the sum of £326 18s. 8d. in respect of the loss of services and expenses incurred by the Crown owing to the personal injuries suffered by two aircraftsmen in the Royal Air Force named Jesse Donaldson Hull and Noel William Verney. On the 5th December, 1930, Hull and Verney were injured through the negligent driving of a motor lorry by the defendant's servant at Shefford Harwicke, Bedfordshire, when the lorry came into collision with a motor cycle on which Hull and Verney were riding. The services of Hull were lost for 398 days, and those of Verney for fifty-two days. The Crown claimed (*a*) the amount of the pay and allowances of the two men during the time they

were unfit for duty, and (*b*) the cost of hospital treatment and special diet provided in Royal Air Force hospitals. Actions previously brought by Hull and Verney against the defendant had resulted in verdicts for the plaintiffs for damages, no claims being made in those actions for loss of earnings or hospital expenses. In the present proceedings the defendant admitted the accident, and the negligence of his servant, and the correctness of the amount claimed, and the only question was whether such a claim by the Crown was maintainable.

MacKinnon, J., said that both men had in fact recovered damages against the defendant, but their claims could not have included anything for loss of earnings because they were paid by their employer, His Majesty's Royal Air Force. They did not include hospital expenses because hospital treatment was provided by the Royal Air Force. In those circumstances, the Crown brought a Latin information against the defendant in respect of those two items—payment during incapacity and hospital expenses. The Crown's claim was based on the old common law principle that a master who had been deprived by the tortious act of another of the services of his servant might bring an action. In a case where the master continued to pay the injured servant and did not engage any extra help, he was paying without any consideration and his damages were *prima facie* the wages which he paid. That was the claim made on behalf of His Majesty. It was not suggested that any extra men were recruited, but those two men were paid for doing nothing. So far as the hospital treatment was concerned, the Crown's claim was: "I have expended this sum and I ought to be compensated for it." The truth was that by the negligence of the defendant's servant those men were incapacitated for a certain length of time. If, because the Crown paid them wages, the loss fell on the Crown, the Crown could recover. He thought that that was sufficient ground for deciding in favour of the Crown. Judgment for the Crown, for the amount claimed, with costs.

Counsel: *The Solicitor-General* (Sir Donald Somervell, K.C.) and *Wilfrid Lewis*, for the Crown; *J. Alan Bell*, for the defendant.

Solicitors: *The Treasury Solicitor: Hair & Co.*

[Reported by Charles Clayton, Esq., Barrister-at-Law.]

Leng *v.* Dodgshon.

Goddard, J. 8th February, 1935.

Dog—Bite—*Scienter*—Liability.

In this case Miss Lily Bradlaugh Leng claimed from Mrs. Ada Charlotte Dodgshon, a widow, damages for injury caused by a dog bite. The plaintiff's case was that when she was out for a walk with a friend the dog "sprang at her, dropped its head, and bit her on the calf of the left leg." A vein was punctured, and the plaintiff was now a cripple. After the bite phlebitis set in and her leg had wasted so much that she was able to walk only with the aid of surgical boots which had been specially provided. Her case was that the dog was savage and that the defendant knew that it had become a nuisance in the neighbourhood. The plaintiff, in evidence, said that twice previously the dog had tried to bite her. Evidence was also given on behalf of the plaintiff by witnesses who said that the dog, whose name was Scrap, had bitten them, or attempted to do so. The defendant, in evidence, said that she had never received any complaint, except from Miss Leng, that the dog had bitten, or attempted to bite, anybody.

Goddard, J., said that he had to decide (*a*) whether the dog had a disposition to bite mankind, and (*b*) whether the defendant knew of it. The law of England had always been very tender towards the owners of dogs. A great many people thought that it was too tender. It was no part of his duty to consider whether that part of the common law was right or wrong, but, as it stood, if a dog bit a human being, his owner could not be made liable unless he knew that the dog had a propensity to bite mankind. The real test was whether the dog was ferocious—not in the popular sense, for that was difficult to imagine in the case of a toy dog—but it might be vicious, and quite a small dog might have a tendency to go for people, and—perhaps in fun—bite them. He was quite sure that Scrap was in the habit of rushing up to people and nipping and biting their ankles if he could. He was also satisfied that the defendant had had that fact brought to her knowledge. Judgment for the plaintiff for £430, including special damages.

Counsel: *R. P. Croom-Johnson*, K.C., and *H. L. Parker*, for the plaintiff; *H. O'Hagan*, for the defendant.

Solicitors: *Hasties*, agents for *Whitley Hughes and Luscombe*, East Grinstead: *Turner & Evans*, for *Morrison, Hewitt & Harris*, Redhill.

[Reported by Charles Clayton, Esq., Barrister-at-Law.]

Railway and Canal Commission.

In re Railways (Valuation for Rating) Act, 1930. *In re* Appeals by the Southern Railway Company and Others from a Decision of the Railway Assessment Authority.

MacKinnon, J., Sir Francis Taylor, K.C., and Sir Francis Dunnell. 6th February, 1935.

Rating — Railways — Appeal — Ascertainment of Net Annual Value of Undertaking—Hypothetical Tenant—Profits Basis—Costs—Railways (Valuation for Rating) Act, 1930 (20 & 21 Geo. 5, c. 24), s. 4 (2).

These were appeals by the Southern Railway Company and by the Corporation of Croydon, the County Valuation Committee of Middlesex, the London County Council, and the Corporation of Brighton against a decision of the Railway Assessment Authority whereby the authority assessed the value of the railway hereditaments of the company for the year 1931 at the sum of £2,180,000. The company contended that the correct figure was £500,000, the other appellants that it was £3,000,000. The court pronounced the figure to be £1,077,131.

MacKinnon, J., said, first, that a preliminary question had arisen as to the nature of an appeal under the Railways (Valuation for Rating) Act, 1930. The railway company desired to treat the proceedings as a re-hearing. On behalf of the Railway Assessment Authority the point was taken that the appellants were not entitled to call evidence, or to treat the matter as one for re-hearing, but that it must be treated strictly as by way of appeal. The court had decided that all parties to the appeal were entitled to call evidence, and that the court would decide the case on the evidence so adduced. The problem what, for the material year, was the net annual value of the undertaking as a whole was ultimately a question of fact, but it depended on the proper consideration of various principles, both legal and economic. After referring to the relevant statutory provisions, his lordship said that the very old principle of the statute law that the rent which a hypothetical tenant might reasonably be expected to pay was the net annual value did not cease to apply to the rating of railways under the Act of 1930. It was contended that s. 4 (1) of the Act clearly referred to the principle of estimating the annual value which had been given the nickname of "the profits basis." That principle involved the ascertainment of three factors: (1) The estimation of the capital value of the plant and implements required by the hypothetical tenant for working the undertaking; (2) the fixing of a percentage to be allowed to the tenant on that capital as the remuneration which he could reasonably expect to receive for providing it; and (3) the estimation of the yearly net receipts from the working of the undertaking. The application of (2), the proper percentage, to (1), the tenant's capital, would produce a figure of £*x*. If £*x* were deducted

from (3), the yearly net receipts, the balance remaining would be the rent which the tenant might reasonably be expected to pay. It was really on the meaning of s. 4 (2) of the Act of 1930 that the chief contest about the law had arisen. That sub-section provided that, in estimating the rent at which railway hereditaments occupied by a company might reasonably be expected to let as a whole, the Railway Assessment Authority, and any court before which any determination of the authority was under appeal, should not be bound to give effect to any custom or practice affecting the valuation of railway hereditaments which obtained before the Act with regard to the deduction or allowance to be made in respect of the capital of a tenant, but should have regard to all relevant circumstances and all material considerations with a view to securing that such estimated rent should represent a fair and just division of the net receipts as between landlord and tenant. The meaning of that sub-section was obscure. It seemed quite clear that the only duty of the court was to estimate by reference to the average net receipts "the rent at which the hereditament might reasonably be expected to let." A direction to assess the rent by reference to the average net receipts, and in doing so to have regard to all relevant circumstances and all material considerations with a view to securing that the rent should represent a fair and just division of the net receipts as between landlord and tenant, could only be achieved by a proper application of what was called the profits basis, i.e., by calculation worked in the way already stated and based on the three factors, (1) the tenant's capital, (2) the percentage to be allowed to him thereon, and (3) the yearly net receipts to be earned by him from the undertaking. The third of those was the agreed figure of £5,408,000. The court, therefore, had to arrive at (1) the tenant's capital, and (2) the percentage to be allowed on it. After dealing with the matters relevant to those questions his lordship said that he agreed with his colleagues in finding the tenant's capital in the present case to be £27,610,690. What percentage on that capital should be allowed? He agreed with his colleagues in thinking that on the particular facts of the present case 15 per cent. was the proper figure to take. Each case must depend on its own facts. They thus got in the present case £27,610,690 as the tenant's capital, 15 per cent. as the proper allowance on it, and £5,408,000 as the net receipts: 15 per cent. on £27,610,690 was £4,141,603; to that figure must be added £189,266 as the tenant's share of receipts earned without the use of the tenant's rolling stock, making £4,330,869. Deducting that figure from £5,408,000, the net receipts, gave a figure of £1,077,131. That was the net annual value, and should be inserted in the revised valuation roll. Appeal of the railway company allowed, with costs against the Railway Assessment Authority. The appeal of the local authorities was dismissed.

Sir FRANCIS TAYLOR and Sir FRANCIS DUNNELL concurred.

COUNSEL: *Tyldesley Jones*, K.C., *W. T. Monckton*, K.C., *Alfred Tylor*, and *Trustram Eve*, for the Southern Railway Company; *S. G. Turner*, K.C., and *Michael Rowe*, for the other appellants; *Sir William Jowitt*, K.C., *Sir Stafford Cripps*, K.C., and *Erskine Simes*, for the Railway Assessment Authority.

SOLICITORS: *W. Bishop; Sharpe, Pritchard & Co.; Torr & Co.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

TABLE OF CASES previously reported in current volume.

Obituary.

MR. R. H. ABELL.

Mr. Richard Hughes Abell, solicitor, of Worcester, died on Wednesday, 6th February, at the age of fifty-four. Mr. Abell, who was educated at Clifton College, served his articles with the firm of Mr. John Waghorne, of Cheltenham, and was admitted a solicitor in 1902. He had been Chapter Clerk of Worcester Cathedral for many years.

MR. E. J. BAIRSTOW.

Mr. Eric John Bairstow, LL.B., solicitor, head of the firm of Messrs. Lawson Lewis & Bairstow, of Eastbourne, died on Sunday, 27th January, at the age of forty-one. Admitted a solicitor in 1920, he entered into partnership with the late Mr. Frederick Lawson Lewis in 1928, and practised at Eastbourne and Lewes. Mr. Lawson Lewis died in 1929, and Mr. Bairstow succeeded him as Clerk to the Justices at Lewes.

MR. G. S. EARLE.

Mr. George Selmes Earle, solicitor, of Herne Hill, S.E., died at Saltdean, Sussex, on Tuesday, 12th February. Mr. Earle was admitted a solicitor in 1910.

MR. R. H. EDELSTON.

Mr. Roger Heathcott Edelston, solicitor, a partner in the firm of Messrs. Edelston, Son & Carter, of Preston, died on Sunday, 3rd February, at the age of thirty-five. Mr. Edelston was educated at Clifton College, and served his articles with his father, Mr. W. S. Edelston. He was admitted a solicitor in 1924.

MR. C. LUPTON.

Mr. Charles Lupton, M.A., solicitor, a partner in the firm of Messrs. Dibb, Lupton & Co., of Leeds, died recently in his eightieth year. Mr. Lupton was educated at Rugby and Trinity College, Cambridge, and was admitted a solicitor in 1881. He was a former Lord Mayor of Leeds.

MR. A. S. THURSFIELD.

Mr. A. Spencer Thursfield, retired solicitor, of Kidderminster, died at his home at Malvern on Tuesday, 12th February, at the age of seventy-eight. He was educated at Bromsgrove School, and was admitted a solicitor in 1888. He retired from practice in 1924, and had since acted as a magistrate at Kidderminster and Malvern.

MR. A. E. Y. TRESTRAIL.

Mr. Alfred Ernest Yates Trestrail, M.A., D.S.O., solicitor, a partner in the firm of Messrs. Moore, Trestrail & Blatch, of Lymington and New Milton, died on Tuesday, 5th February, at the age of fifty-eight. He was educated at Christ's College, Cambridge, and was admitted a solicitor in 1900. He was a partner in the firm of Messrs. Armitage, Sykes & Hinchcliffe, of Huddersfield, from 1919 until 1923, when he moved to Hampshire.

Parliamentary News.

Progress of Bills.

House of Lords.

British Shipping (Assistance) Bill.
Read Second Time. [12th February.
Educational Endowments (Scotland) Bill.
Reported without Amendment. [12th February.
Electricity (Supply) Bill.
Royal Assent. [12th February.
Folkestone and District Electricity Bill.
Read Second Time. [7th February.
Frimley and Farnborough District Water Bill.
Read Second Time. [7th February.
Norwich Electric Tramways Bill.
Read Second Time. [7th February.
Severn Navigation Bill.
Read Second Time. [7th February.
Sharpness Docks and Gloucester and Birmingham Navigation Bill.
Read Second Time. [7th February.
Stourbridge Navigation Bill.
Read Second Time. [7th February.
Supreme Court of Judicature (Amendment) Bill.
Royal Assent. [12th February.
Unemployment Insurance Bill.
Reported, with Amendments. [12th February.

House of Commons.

Blackpool Improvement Bill.
Read Second Time. [13th February.
Consolidated Fund (No. 1) Bill.
Read Third Time. [13th February.
Government of India Bill.
Read Second Time. [11th February.
Increase of Rent and Mortgage Interest (Restrictions) Bill.
Read Second Time. [12th February.
London Midland and Scottish Railway Bill.
Read Second Time. [11th February.
London Passenger Transport Board Bill.
Read Second Time. [7th February.
Ministry of Health Provisional Order (County of Holland Joint Hospital District) Bill.
Read Second Time. [13th February.
Post Office (Amendment) Bill.
Read First Time. [7th February.
Public Health (Coal Mine Refuse) Bill.
Read First Time. [12th February.
Unemployment Assistance (Temporary Provisions) Bill.
Read Third Time. [13th February.

Questions to Ministers.

JUVENILE COURTS (WOMEN JUSTICES).

Mr. MANDER asked the Secretary of State for the Home Department in how many cases in connection with the juvenile courts established under the Children's Act women justices have been placed on the panel; in how many cases no women were appointed; and in how many areas there are no women magistrates.

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT (Sir JOHN GILMOUR): Eight hundred and thirty-two juvenile court panels include, and 153 do not include, women justices. I am informed that during last year over 400 women justices have been added to the Commissions of the Peace, leaving only about ten borough and fifty county divisions without women justices. [12th February.

ASSURANCE COMPANIES ACT.

Mr. DENMAN asked the President of the Board of Trade whether he is aware of the obstructions in the way of varying investments deposited with the High Court under the Assurance Companies Act; and whether he will either make further rules or take such other steps as will simplify and cheapen a process beneficial to the interests of policy holders.

Mr. RUNCIMAN: So far as I am aware, the difficulties to which my hon. Friend has drawn my attention do not arise from the requirements prescribed by the Board of Trade in their Order dated the 6th June, 1910, relating to deposits by insurance companies. The procedure in these matters is governed by the rules of the Supreme Court.

Mr. DENMAN: Has the Board of Trade no power of controlling these businesses and making it reasonably easy for those who wish to vary their investments, to do so.

Mr. RUNCIMAN: Any communication on that point had better be addressed to my right hon. and learned Friend the Attorney-General. [12th February.

Societies.

University of London: University College.

THE ENGLISH LEGAL MIND.

Mr. C. N. S. FIFOOT delivered a lecture with this title at University College on the 6th February. He dealt with three phenomena in English Law which seemed to him to stamp it with the national characteristic and to insulate it from the main current of continental jurisprudence. The first of these was, he said, the essential continuity of English political life, and the manner in which historical investigation had always been a primary and peculiar method no less of judicial technique than of political apology. Lord Mansfield, though traditionally regarded as an uncompromising iconoclast, had been an outstandingly successful exponent of this method. In *Cottingham* v. *King* (1758), 1 Burr. 623, a writ of error had been brought from the Court of King's Bench in Ireland in an action of ejectment, and the ground of appeal was uncertainty in the declaration where the pleader had sought to describe the premises. The appellant had cited a sufficiently imposing array of slightly antiquated authorities. Lord Mansfield had dispensed substantial justice by reading them in the the light of contemporary history and forbidding their citation in new and altered conditions. He held that the precision appropriate to the formality of a real action was incompatible with the later aspect of ejectment as a convenient, if fictitious, means of trying title. Even when he had dared to lay sacrilegious hands on that ark of the conveyancer's covenant, the Rule in Shelley's Case, his approach had been essentially that of the evolutionist. He had declared that since the feudal tenures which had been the reason of the rule had been taken away, the courts had indeed followed the rule where the case was plainly and directly within it, but had departed out of it whenever the intent of the testator had been clearly against it. In *British Russian Gazette* v. *Associated Newspapers* [1933] 2 K.B. 644, the Court of Appeal had agreed that, according to the original rule, accord would discharge an obligation only it it were actually performed and not if the consideration was executory; when, however, the law of contract became generalised on a consensual basis, the subsidiary rule of accord and satisfaction rested on a false foundation. Many decisions had followed in blind adherence to the old formula, and the new rule had been introduced under the guise of interpreting the words of the contract, or the intentions of the parties. In the present case the Court of Appeal had recognised the new tradition as a *fait accompli* and a corollary of the changed status of the law of contract.

CONVENIENCE, NOT LOGIC.

The second quality which Mr. Fifoot suggested as a national characteristic was an instinctive appreciation of the limitations of logic as an instrument of policy. The English mind, in law and in politics, had usually experienced little difficulty in resisting the temptation to sacrifice practical convenience to logical symmetry. In the *Duke of Norfolk's Case* (1681), 2. Swanst. 454, Lord Nottingham had declined to speculate on the possible permutations of the Perpetuity Rule, stating that he would stop everywhere when any inconveniences appeared, and nowhere before. Lord Halsbury in *Quinn* v. *Leathem* [1901] A.C. 506, had refused in the same spirit to be disturbed by the deductions which counsel had sought to draw from *Allen* v. *Flood*. He had said: "A case is only authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is a logical code, whereas every lawyer must acknowledge that the law is not always logical at all."

The remoteness of damage rule was singularly difficult to apply on logical criteria. It had become an all-too-familiar legal phrase, but the cases in which it had been applied suggested that it had in practice only an empirical—almost a fortuitous—significance. The *Polemis* decision could not be justified on juristic grounds. The law, however, could not live by analysis alone; the judge must determine on practical considerations an issue which, in an academic world, he might have sustained indefinitely. Lord Wright in *The Edison* [1933] A.C., at 460, had acknowledged the pragmatism of the English legal process as frankly as any of his predecessors, saying: "In the varied web of affairs the law must abstract some consequences as relevant, not perhaps on grounds of pure logic, but simply for practical reasons." The application of the doctrine of the voluntary assumption of risk introduced similar difficulties. The relative importance of academic discussion might be instanced as an outcome of the essentially forensic character of English law, where the judge was not only habituated to the practitioner's outlook but put himself to a large extent in the hands of counsel, relying on the

arguments which they presented and the authorities which they cited. It was not unnatural, therefore, that judges of all ages had distrusted academic subtlety. This attitude had avoided the excruciating dilemmas which had agitated Continental jurists in their speculations on the nature of corporate personality. Nevertheless, the comparative ineffectiveness of the jurist in England was not without its misfortunes. It had helped to maintain the lacunæ which were all too visible in the legal system. The hypotheses of *Smith* v. *Hughes*, L.R., 6 Q.B. 597, familiar in their most repellent form to generations of students of "Anson on Contract," remained unelaborated. By way of contrast, Mr. Fifoot pointed to the statutory settlement of the law of mistake which had been made by a committee of jurists and business men in Scandinavia in 1918.

One factor in this coarsening of the fibre of English law had, perhaps, been the English litigant. The *corpus vile* of English jurisprudence was the man of substance, the landowner and the merchant—in latter days the association and the insurance company. These litigants relied on their own initiative and could employ skilled technicians. The English judge assumed the existence of trained draftsmen as assistants in the process of legal development—he was ready to help those who could help themselves. Relying on the collaboration of litigant and draftsman, the English judge insisted on the need of certainty, perhaps at the expense of the ideally just or logical solution. Once a rule was settled the litigant could, within tolerable limits, arrange for its evasion if he so desired. Lord Blanesburgh had pointed out in *Ward* v. *Van der Loeff* [1924] A.C. 653, that the survival of the rule against perpetuities could be explained, if not justified, on the assumption that only a miracle could now upset the conveyancer's plans for its evasion. In contract the judge expected the parties to make their own bargain and the litigant to suggest his own liability; the judge would then, if possible, set upon it the seal of his own authority.

A Distrust of Generalisation.

The third element in the English technique which Mr. Fifoot emphasised was its distrust of generalisation. The English lawyer's instinctive empiricism, he said, explained his scepticism as to the value of legislation, and the failure of all attempts to codify the law. The emphasis which he laid upon the divorce of judicial and statute law was a corollary of this distrust. Professor Amos had said (Camb. L.J. II. 340): "The Continent does not draw the hard and fast line that we do between law and legislation. In France, Italy and Germany every law student is taught, by the very atmosphere he breathes, to look upon all law as a more or less successful essay in legislation." The English judge, in so far as he generalised, did so to meet the immediate need of rationalising his decisions. A warning against a too literal or too ardent interpretation of his words was implicated in the nature of his office. He was to determine present controversy, even if he had to do so according to the law. He contemplated the process by which he arrived at a decision, rather than the conclusions which might afterwards be drawn from it. The principles of English law had been developed, not by projecting a formula into the future, but by reflecting *ex post facto* upon a series of tentative judgments. He insisted on reading a decision in the light of its context. Lord Mansfield, before giving judgment in *R.* v. *Peters* (1758), 1 Burr. 568, had desired counsel to state the case for the sake of the students, observing that "Nothing misleads so much as reporting the determination of courts of justice without having a sufficient and correct statement of the case."

The hazard of generalisation had been demonstrated in more modern times by the cases in which the judges had considered the effect of drunkenness upon criminal liability. In *R.* v. *Meade* [1909] 1 K.B. 895, Lord Darling had said that a man was taken to intend the natural consequences of his acts, but that this presumption might be rebutted by showing that his mind had been so affected by the drink he had taken that he was incapable of knowing that what he was doing was dangerous. In *R.* v. *Beard* [1920] A.C. 479, Lord Birkenhead had pointed out that this was an unnecessary and confusing generalisation which had led the lower court into error; that drunkenness was only a defence if it prevented the prisoner from forming the specific intent necessary to constitute the crime with which he was charged. Meade had intended to do grievous bodily harm. The proof of drunkenness negatived this offence, and the killing was therefore not murder. In *R.* v. *Beard* the intent alleged had been to commit rape, and unless the prisoner was so drunk as not to be capable of forming this intent, his condition could constitute no defence. This contention was impossible to argue, and the prisoner was guilty of murder. The long and chequered history of the English law of negligence afforded a final illustration: Lord Atkin had said in *Donoghue* v. *Stevenson* [1932] A.C. 579, that it was very difficult to find statements of general application defining the relations between parties that gave rise to the duty of care. The result was that the courts had been engaged upon an elaborate classification of duties. It could be ascertained at any time whether the law recognised a duty, but only where the case could be referred to some particular species which had been examined and classified.

The Solicitors' Managing Clerks' Association.

The Law of Distress for Rents.

Mr. J. P. Eddy delivered a lecture on this subject at a meeting of the Association held on the 8th February in Middle Temple Hall, with Lord Justice Greer in the chair. The common law rule, he said, was that in order that the right of distress might be exercised, there must be an actual existing demise. The Landlord and Tenant Act, 1709, however, provided that even if the lease had expired or had been determined, distress might be levied within six months, or during the continuance of the title or interest of the landlord, or during the possession of the tenant. The rent must be in arrear—that is, unpaid the day after it was payable. No demand was necessary before distress was levied. Distress could not legally be made after the full amount had been tendered to the landlord or his agent, even if a distress warrant had already been delivered to the bailiff. A judgment for arrears of rent extinguished the right to levy distress. As a general rule the landlord could distrain on all personal chattels, to whomsoever belonging, found on the demised premises. There were, however, a number of exceptions, such as chattels of the Crown, goods of an ambassador and goods in the custody of the law. The latter comprised things already distrained, goods in the possession of the sheriff or a bailiff, and goods taken under an attachment. An execution creditor removing goods must pay the arrears of rent, not exceeding one year's rent, due at the time of execution. A long list of classes of goods were absolutely privileged from distress, and certain goods were conditionally privileged, such as the tools or utensils of a man's trade not in actual use; implements of husbandry, beasts of the plough, sheep and live stock at agistment. Under-tenants, lodgers and persons with no interest in any tenancy of the premises could serve a declaration upon any superior landlord who levied distress upon any of their goods. They must annex a correct inventory of the goods which they claimed, and could then apply to a court of summary jurisdiction for an order for the restoration of all such goods. Goods belonging to the spouse of the tenant were not protected, nor were goods comprised in any bill of sale, hire-purchase agreement or settlement made by the tenant, but where the tenant himself was not personally a party to the agreement the goods were protected.

A distress for rent might be levied either by the landlord personally or by a certificated bailiff on his behalf. The right to levy a distress involved the right to enter demised premises, and in doing so the landlord or bailiff might open unfastened doors, or enter by partially-opened windows, or climb over fences, but he must not break open outer doors or windows, and must not open a closed but unfastened window. He could re-enter by force if he had been expelled, or if he had left voluntarily and had been refused re-admission. Seizure might be actual, or constructive, i.e., the prevention of the removal of goods. Distress was illegal where there had been no right to distrain, or where a wrongful act had been committed in seizing. It was irregular when, after a levy had been legally made, the subsequent proceedings had been unlawful, such as sale without notice of distress or for less than the best price. Distress was excessive where the value of the goods received was disproportionate to the amount owed. The distrainer was only required to exercise reasonable and honest discretion in estimating what the goods would realise.

Mr. Eddy illustrated the law of pound-breach in an amusing manner by recounting the case of *Lavell & Co., Ltd.* v. *O'Leary* [1933] 2 K.B. 200. The tenant was a Chinaman named Wong Gee, the proprietor of the Canton Café; he fell into arrears with rent, and the landlords, Messrs. Lavells, sent a certificated bailiff, who made out a notice of distress and handed it to the manager, another Chinaman. The only person to whom he could make himself intelligible was a Chinese waitress called Rachel Tam, who signed "a short walking possession agreement," by which she agreed on behalf of the tenant to pay the lawful fees, to allow the bailiff to re-enter at any time, and to refrain from removing any distrained goods. This constituted an impounding; the goods were deemed to be in the custody of the law and anybody removing them was guilty of pound-breach. Various extensions of time were asked and given, and the day before the time ran out a young woman called at the offices of Messrs. O'Leary, removal contractors, and asked them to send a lorry early next morning

to remove some furniture to an auction. They did so in good faith, and their agent found two men awaiting him. These men removed the furniture on to the landing outside the café and the drivers helped to carry the goods downstairs and load them. The lorry was then driven to Brixton and the goods loaded on to another lorry. When the bailiff reached the café he found nothing but the linoleum. The landlord sued the removal contractors for pound-breach. In the King's Bench, Mr. Justice Macnaghten held that the bailiff had not impounded the goods, for he had taken no steps to secure them against removal, had left no one in possession and, though the premises might have been a pound as between the landlord and the tenant, they had not been one as between the landlord and the removal contractors. The Court of Appeal held, on the contrary, that if a pound had been created the goods were in the custody of the law and the pound was binding on strangers. In this case, however, there had been no sufficient evidence that the removal contractors had committed pound-breach.

Solicitors' Benevolent Association.

The monthly meeting of the Directors was held at No. 60, Carey-street, London, on the 6th instant. Mr. T. G. Cowan (in the chair), Sir Norman Hill, Bart., Sir Edmund Cook, C.B.E., Sir E. F. Knapp-Fisher, Mr. F. E. F. Barham, Mr. G. S. Blaker (Henley), Mr. P. D. Botterell, C.B.E., Mr. F. J. F. Curtis (Leeds), Mr. T. S. Curtis, Mr. E. F. Dent, Mr. A. North Hickley, Mr. G. Keith, Mr. E. B. Knight, Mr. C. W. Lee, Mr. C. G. May, Mr. H. F. Plant, Mr. A. B. Urmston (Manchester), Mr. Hy. White (Winchester), and the Secretary. Five hundred and twenty-six pounds was distributed in grants to necessitous cases; thirty-five new members were elected; Mr. G. C. Daw was elected a Director at Exeter, and other general business was transacted.

The Law Association.

The usual monthly meeting of the Directors was held on the 4th February, Mr. John Venning in the chair. The other Directors present were Mr. E. B. V. Christian, Mr. Guy Cholmeley, Mr. Arthur Clark, Mr. Douglas T. Garrett, Mr. G. D. Hugh-Jones, Mr. C. D. Medley, Mr. Frank S. Pritchard, Mr. Wm. Winterbotham, and the Secretary (Mr. Andrew H. Morton). The Secretary reported donations to the Christmas gift fund of £54 10s., receipt of a legacy of £100, and the result of the annual appeal in January to be three new life members, twenty-five annual subscribers, and £5 5s. donations to the general fund. The sum af £80 was voted in relief of deserving applicants, the above new members were elected, and other general business was transacted.

Gray's Inn Debating Society.

The first meeting of the year was held in Gray's Inn Common Room at 8.30 p.m. on Thursday, 31st January, when the annual Joint Debate with the Gonville and Caius College Law Club took place, the President being in the Chair. The motion for debate was "That the Minister of Transport is to be congratulated on his road traffic regulations." The President having welcomed the members of the visiting society, the motion was proposed by Mr. G. K. McCulloch, and opposed by Mr. R. V. Gibson (G. and C.C. Law Club); Mr. E. Conwil Lewis (President, G. and C.C. Law Club) spoke third, and Mr. James C. Hales spoke fourth. On the motion being thrown open to the house, Mr. J. Simpson, Mr. F. A. Vallat and Mr. John Wood spoke in favour of the motion, and Mr. Thomas Terrell, Miss J. M. Bernal Greenwood, M.B.E., Mr. Henry Russell, O.B.E. (Ex-President), and Mr. J. Mervyn Jones against it, after which the proposer replied. The motion was carried by eleven votes to eight, the number of members of the two societies and guests present being twenty-eight.

Law Students' Debating Society.

At a meeting of the Society held at The Law Society's Court Room, on Tuesday, 12th February (Chairman, Mr. L. J. Frost), the subject for debate was "That the case of *Wilchick* v. *Marks and Silverstone* [1934] 2 K.B. 56, was wrongly decided." Mr. B. W. Main opened in the affirmative; Mr. D. B. Verne opened in the negative; Mr. R. P. A. Garrett seconded in the affirmative; Mr. W. W. Teggin seconded in the negative. The following members also spoke: Messrs. J. G. McAndrew, W. M. Pleadwell, D. R. Boult, S. Campbell and R. E. Selby. The opener having replied, and the Chairman having summed up, the motion was lost by two votes. There were twenty-one members and six visitors present.

The Hardwicke Society.

A meeting of the society was held on Friday, 8th February, at 8.15 p.m., in the Middle Temple Common Room, the president (Mr. A. Newman Hall) in the chair. Mr. E. Roskill moved: "That the benefits of the Law are not sufficiently accessible to poor persons." Mr. D. C. L. Potter opposed. There also spoke Mr. T. H. Mayers, Mr. Granville Sharp (ex-president), Mr. A. H. King (visitor) Mr. Petrie, Mr. A. C. Douglas, Mr. A. A. Baden Fuller, Mr. Cooke and Mr. Llewellyn Thomas. The hon. mover having replied, the House divided, and the motion was carried by six votes.

The Union Society of London.

(Centenary Year.)

A meeting of the Society was held at the Middle Temple Common Room, on Wednesday, the 13th February, at 8.15 p.m., the President (Mr. Alun Llewellyn) being in the chair. Mr. E. J. Rendle (Hon. Secretary) proposed the motion: "That this House regrets Mr. Lloyd George's recent criticisms of British Military leadership in the Great War." Mr. Brian Winch opposed, and Messrs. Baker, Ingram, Fraser, Russell-Clarke, Hurle Hobbs, Coram, Morgan and Fedrick also spoke. Mr. Rendle replied. Upon division the motion was lost by four votes.

Rules and Orders.

New County Court Rules and County Courts Act, 1934.

The Lord Chancellor makes the following announcement:—

(1) When new County Court Rules have been prepared, the Lord Chancellor proposes to recommend that the County Courts Act, 1934, should be brought into operation by means of an Order in Council on a day subsequent by some months to the making and publication of the Order in Council. The public will therefore have due notice of the commencement of the Act.

(2) As already published, certain provisions of the County Courts (Amendment) Act, 1934, came into operation on the 1st January, 1935. The Lord Chancellor, as at present advised, does not propose to recommend that any further provisions of that Act should come into operation before the Act as a whole is superseded and replaced by the County Courts Act, 1934.

Legal Notes and News.

Honours and Appointments.

The King has been pleased to approve the following appointments:—

Sir Walter Greaves-Lord, K.C., M.P., and Mr. George Malcolm Hilbery, K.C., to be Justices of the High Court of Justice, King's Bench Division.

The King has been pleased to approve the appointment of Mr. Wilfrid Arthur Greene, K.C., to be a member of the Council of the Duchy of Lancaster.

The Lord Chancellor has appointed Mr. H. C. Haldane to be a member of the Law Revision Committee in the place of Sir Reginald Poole, whose resignation, by reason of pressure of work, the Lord Chancellor has accepted with regret. Mr. Haldane was admitted a solicitor in 1897.

The Attorney-General has made the following appointments:—

Mr. John C. Maude to be Prosecuting Counsel to the Post Office at the Central Criminal Court in succession to Mr. St. John Hutchinson, K.C.

Mr. Ralph George Scott Bankes to be Prosecuting Counsel to the Post Office on the North Wales Circuit in succession to Mr. Ralph Sutton, K.C.

Mr. Henry Hague Davis, a Justice of the Appeal Court, Ontario, has been appointed a Justice of the Supreme Court of Canada, *vice* Mr. Justice R. A. Smith, retired.

Mr. William Lawrence Allen, solicitor, deputy Town Clerk of Eastbourne, has been appointed Town Clerk of Barrow-in-Furness. He was admitted a solicitor in 1926.

Mr. Francis Henry Busby, Assistant Solicitor of Eastbourne, has been recommended for appointment as Deputy Town Clerk of Eastbourne in succession to Mr. Allen. Mr. Busby was admitted a solicitor in 1931.

CALLING OF WITNESSES TO GIVE SAME EVIDENCE.

Mr. Justice Swift at Bristol Assizes last Tuesday, says *The Times*, commented on "the absurd waste of public money" in calling a number of medical witnesses to give the same kind of testimony. Before giving evidence in a road accident case a doctor asked that his costs and those of a nurse should be paid.

The Judge said: "Everybody agrees that a man is killed, and yet we have a doctor to prove he is dead, a nurse to prove he is dead, and an ambulance driver to prove he is dead. The doctor quite rightly says: 'Before I say he is dead I want £8 14s.'; the nurse says: 'Before I say he is dead I want £5 11s. 6d.'; and what in the world the ambulance man will want I haven't the faintest idea."

It was explained that, when a plea of "Not Guilty" was originally entered, it was thought every detail of the case would have to be carefully proved.

CLIENT AND SOLICITOR'S COSTS.

At the conclusion of their findings given on the 25th January last in a matter recently before them, the Disciplinary Committee of The Law Society stated: "The Committee desire to emphasise (not for the first time) the importance, in their view, of complete and frank disclosure by a solicitor to his client, preferably in writing, of the amount which he has received from the opposing party in respect of his own costs and disbursements in effecting a settlement of any dispute."

THE DESPATCH OF BUSINESS AT COMMON LAW.

The Royal Commission on the Despatch of Business at Common Law has held preliminary meetings to discuss questions of procedure.

It has been decided that, unless in any special case the Commission otherwise directs, meetings for hearing evidence will be held in public. For the purpose of these meetings, the date of which will be notified later, the Commission has kindly had placed at its disposal for the time being the Board Room of the Wheat Commission, at 10, Smith-square, Westminster, S.W.1.

Mr. J. G. Foster, Barrister-at-Law, and Mr. G. P. Humphreys-Davies, of the Treasury, have been appointed Joint Secretaries of the Commission with Miss A. M. Fletcher, of the Lord Chancellor's Department, as Assistant Secretary. Any association, organisation or person desiring to communicate with the Commission should apply to the Joint Secretaries, Royal Commission on the Despatch of Business at Common Law, Treasury Chambers, Whitehall, S.W., who will supply any necessary information as to the procedure which should be followed.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT NO. I.	GROUP I. MR. JUSTICE EVE. Non-Witness.	MR. JUSTICE BENNETT. Witness. Part I.
	Mr.	Mr.	Mr.	Mr.
Feb. 18	Andrews	Blaker	Ritchie	*More
,, 19	Jones	More	Andrews	*Ritchie
,, 20	Ritchie	Hicks Beach	More	*Andrews
,, 21	Blaker	Andrews	Ritchie	*More
,, 22	More	Jones	Andrews	Ritchie
,, 23	Hicks Beach	Ritchie	More	Andrews

DATE.	GROUP I. MR. JUSTICE CROSSMAN. Witness. Part II.	GROUP II. MR. JUSTICE CLAUSON. Witness. Part II.	MR. JUSTICE LUXMOORE. Witness. Part I.	MR. JUSTICE FARWELL. Non-Witness.
	Mr.	Mr.	Mr.	Mr.
Feb. 18	*Andrews	Blaker	*Jones	Hicks Beach
,, 19	More	*Jones	*Hicks Beach	Blaker
,, 20	*Ritchie	Hicks Beach	*Blaker	Jones
,, 21	Andrews	*Blaker	Jones	Hicks Beach
,, 22	*More	Jones	*Hicks Beach	Blaker
,, 23	Ritchie	Hicks Beach	Blaker	Jones

* The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 21st February, 1935.

	Div. Months.	Middle Price 13 Feb. 1935.	Flat Interest Yield. £ s. d.	‡Approximate Yield with redemption £ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	115½	3 9 3	3 0 5
Consols 2½%	JAJO	88½	2 16 6	—
War Loan 3½% 1952 or after ..	JD	106½	3 5 9	3 0 6
Funding 4% Loan 1960-90	MN	118½	3 7 6	2 18 10
Funding 3% Loan 1959-69	AO	105	2 17 2	2 14 5
Victory 4% Loan Av. life 29 years ..	MS	116	3 9 0	3 3 0
Conversion 5% Loan 1944-64 ..	MN	122	4 2 0	2 1 10
Conversion 4½% Loan 1940-44 ..	JJ	112	4 0 4	2 6 6
Conversion 3½% Loan 1961 or after..	AO	108½	3 4 6	3 0 5
Conversion 3% Loan 1948-53 ..	MS	105½	2 16 10	2 10 0
Conversion 2½% Loan 1944-49 ..	AO	103	2 8 7	2 2 6
Local Loans 3% Stock 1912 or after..	JAJO	96	3 2 6	—
Bank Stock	AO	369½	3 4 11	—
Guaranteed 2½% Stock (Irish Land Act) 1933 or after	JJ	92	2 19 9	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	96	3 2 6	—
India 4½% 1950-55	MN	115½	3 17 11	3 3 8
India 3½% 1931 or after	JAJO	97	3 12 2	—
India 3% 1948 or after	JAJO	87	3 9 0	—
Sudan 4½% 1939-73 Av. life 27 years	FA	122	3 13 9	3 5 3
Sudan 4% 1974 Red. in part after 1950	MN	117	3 8 5	2 13 6
Tanganyika 4% Guaranteed 1951-71	FA	116	3 9 0	2 15 0
L.P.T.B.4½% "T.F.A." Stock 1942-72	JJ	113	3 19 8	2 9 3
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	111	3 12 1	3 4 10
*Australia (C'mm'nw'th) 3¾% 1948-53	JD	105	3 11 5	3 6 1
Canada 4% 1953-58	MS	112xd	3 11 5	3 3 0
*Natal 3% 1929-49	JJ	101	2 19 5	—
*New South Wales 3½% 1930-50 ..	JJ	100	3 10 0	3 10 0
*New Zealand 3% 1945	AO	102	2 18 10	2 15 4
Nigeria 4% 1963	AO	116	3 9 0	3 3 0
*Queensland 3½% 1950-70	JJ	103	3 8 0	3 4 10
South Africa 3½% 1953-73	JD	108	3 4 10	2 18 4
*Victoria 3½% 1929-49	AO	101	3 9 4	—
CORPORATION STOCKS				
Birmingham 3% 1947 or after ..	JJ	98	3 1 3	—
*Croydon 3% 1940-60	AO	101	2 19 5	2 15 3
Essex County 3½% 1952-72	JD	108	3 4 10	2 18 4
Leeds 3% 1927 or after	JJ	98	3 1 3	—
Liverpool 3½% Redeemable by agreement with holders or by purchase..	JAJO	109	3 4 3	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	88xd	2 16 10	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	95½xd	3 2 10	—
Manchester 3% 1941 or after ..	FA	98	3 1 3	—
*Metropolitan Consd. 2½% 1920-49..	MJSD	101xd	2 9 6	—
Metropolitan Water Board 3% "A" 1963-2003	AO	101	2 19 5	2 18 11
* Do. do. 3% "B" 1934-2003 ..	MS	99xd	3 0 7	3 0 8
Do. do. 3% "E" 1953-73 ..	JJ	103	2 18 3	2 15 8
Middlesex County Council 4% 1952-72	MN	116	3 9 0	2 17 0
† Do. do. 4½% 1950-70 ..	MN	118	3 16 3	3 1 3
Nottingham 3% Irredeemable ..	MN	99	3 0 7	—
Sheffield Corp. 3½% 1968	JJ	108	3 4 10	3 2 2
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture ..	JJ	113½	3 10 6	—
Gt. Western Rly. 4½% Debenture ..	JJ	126½	3 11 2	—
Gt. Western Rly. 5% Debenture ..	JJ	138½	3 12 2	—
Gt. Western Rly. 5% Rent Charge ..	FA	134½	3 14 4	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	133½	3 14 11	—
Gt. Western Rly. 5% Preference ..	MA	118½	4 4 5	—
Southern Rly. 4% Debenture ..	JJ	112½	3 11 1	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	114	3 10 2	3 4 4
Southern Rly. 5% Guaranteed ..	MA	133½	3 14 11	—
Southern Rly. 5% Preference ..	MA	119½	4 3 8	—

*Not available to Trustees over par. † Not available to Trustees over 115.
‡In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other Stocks, as at the latest date.